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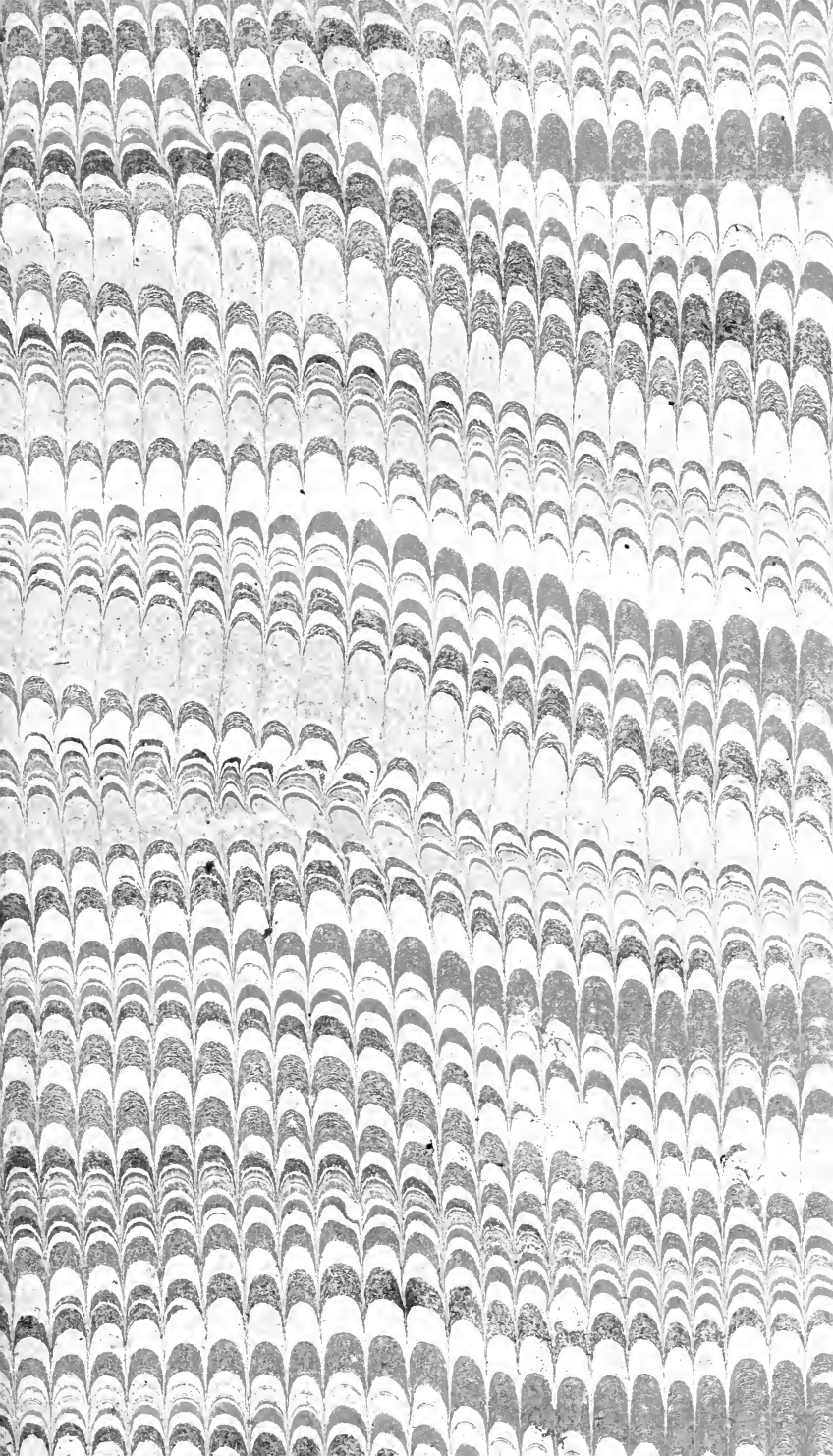


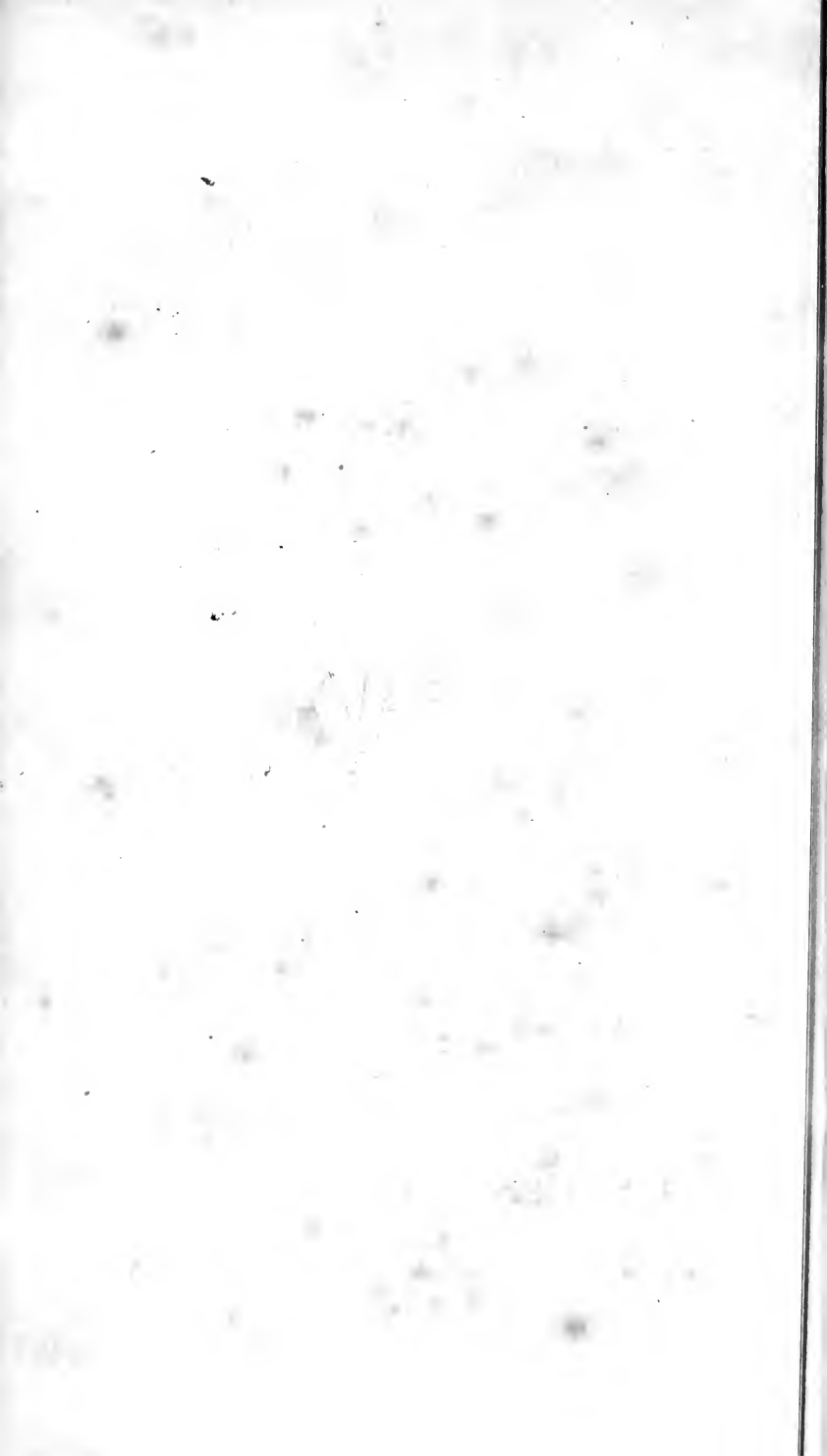
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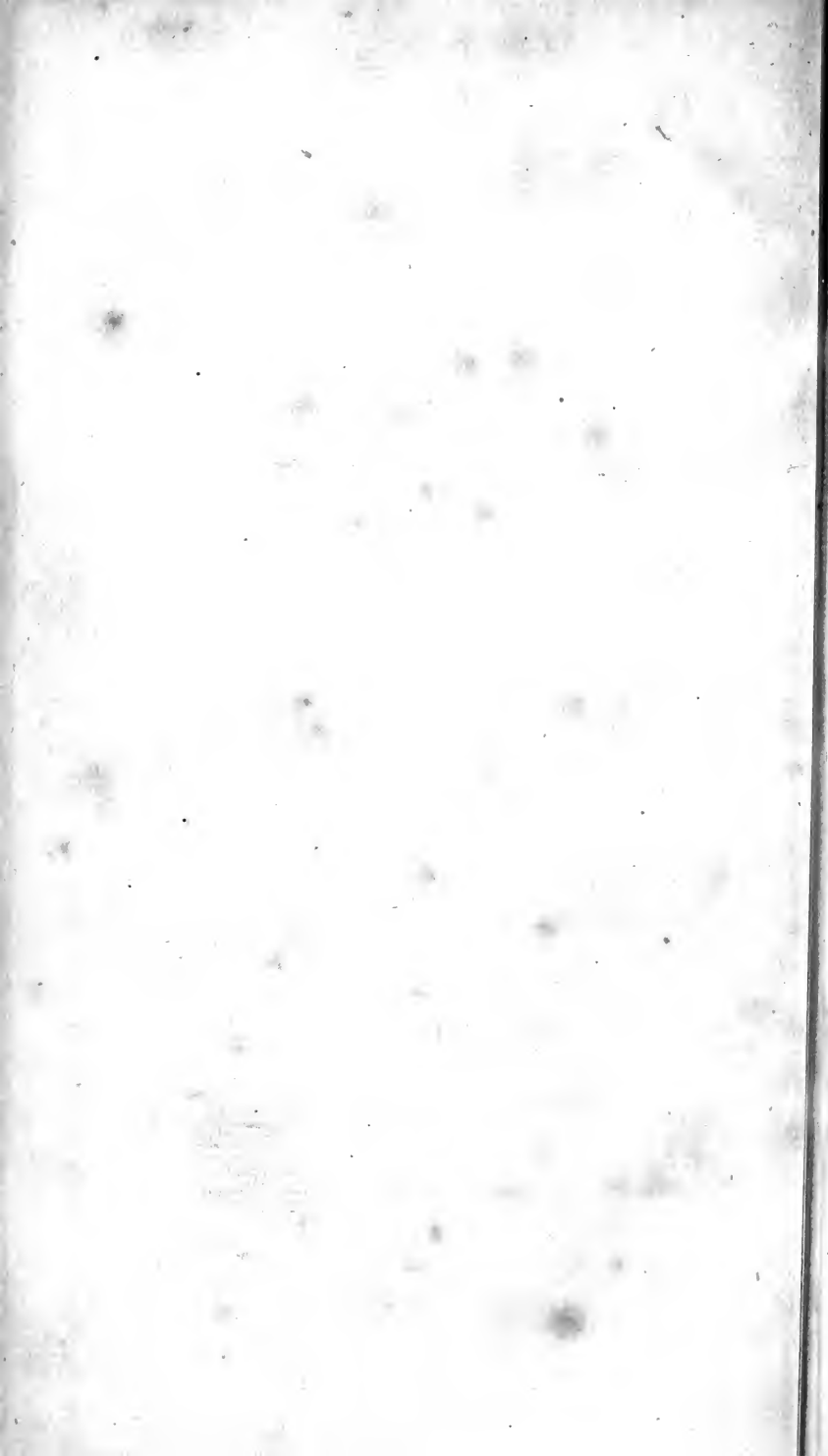
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THE UNIVERSITY OF CHICAGO

CHICAGO, ILL., U.S.A.

H I S T O R Y
 OF THE
 PROVINCE
 OF
 MASSACHUSETTS BAY,
 CONTINUATION

From the Year 1743 to 1762.

INTRODUCTORY SKETCH OF EVENTS LEADING
 TO ITS ORIGINAL SETTLEMENT.

BY GEORGE RICHARDS MINOT.

Fellow of the American Academy of Arts and Sciences and
 Member of the Massachusetts Historical Society.

VOL. II.

Published according to Act of Congress.

BOSTON:

Printed for J. WHITE & Co. Proprietors.

BY KENNETH S. LORING.

June, 1853.

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THE HOUSE OF COMMONS

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JUDGE MINOT sprung from an old and respectable family, and was born in Boston in the month of December, 1758.

After obtaining the advantages of a collegiate education, and pursuing the regular routine of study, he was admitted to the bar in 1782. He soon after became a magistrate, and for several years Judge of Probate. He was the first Judge of the municipal court in the town of Boston; and in all the offices he filled obtained the reputation of an upright and impartial dispenser of the laws. He was temperate and cautious in discussion, firm and humane in his decisions. He was the author of several publications that merited and met general approbation. He had nearly completed a second volume of his History of Massachusetts, when he was suddenly called from his literary labours to receive the reward prepared for the just. He had intended continuing his History to the commencement of the revolutionary war, had health and life been spared him. Having reached that happy independence, which entitled him to possess the *otium cum dignitate*, he died and left a character that will be often quoted, by a large circle of literary friends, who loved him for his virtues, and admired him for talents, which time will no otherwise affect than to appreciate.

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MASSACHUSETTS BAY.

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THE Recovery of America, which stimulated genius to so many efforts in the useful arts, and so widely extended the benefits of commerce.

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CONTINUATION OF THE HISTORY

OF THE

PROVINCE

OF

MASSACHUSETTS BAY.

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THE discovery of America, which stimulated genius to so many efforts in the useful arts, and so widely extended the benefits of
 VOL. II. B 1757.
commerce,

commerce, increased also a thirst for dominion, and the destructive consequences of war. The two great rival nations of Europe, after measuring their strength for centuries, by regular contests in their own neighbourhood, where the history of every post was the key to its strength, and detailed the risk and manner of subduing it, were now hazarding the contest on a very different ground ;—in a country so little explored, as to make it extremely difficult to operate systematically, and too recently settled to afford a just calculation of its strength. How to preserve what had been acquired, and how to encroach upon a hostile territory, became the favourite science of ambition, and engaged the talents of the ablest ministers in Europe ; whilst the scene of action invited military enterprise to display its ingenuity in surmounting the natural obstructions of a wilderness, and in engaging the alliance of the wavering natives. In a struggle conducted at so great a distance, and under such circumstances of uncertainty, it was not to be expected that a plan of action could be struck out, either permanent in its principles, or decisive in its advantages. The great Commoner of England,
now

now introduced at the head of the ministry, with that masculine force of genius, which exalted his administration, determined to act offensively against the French, and to meet them in Canada. To forward his system, he resolved to support the Colonies with an ample force, to banish all jealousy arising from narrow ideas of compensation, and to direct the national strength into the channel, where it most readily inclined to flow and rise to its summit, by the operations of the navy. The effects of his counsels, however, were not to be immediately realized. Another year was destined to crown the arms of France with exultation, flattering indeed for a time, but the preface of her final chagrin and ruin in America.

The internal arrangements among the British Colonies for prosecuting the war were taken into consideration at an early period. The annual military Council, having been once held at Alexandria, and afterwards at New-York, was this year convened at Boston. Lord Loudoun, arriving there on the nineteenth of January, was received by Governors Lawrence from Nova-Scotia, Fitch from Connecticut, Hopkins from Rhode-Island,

Rhode-Island, and, in the absence of the Governor of Massachusetts, by a commission from that Province: this was filled by Thomas Hutchinson the future Governor, William Brattle, Thomas Hubbard, John Otis, and — Welles, Esquires.

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The Commander in Chief addressed the Council in a speech, exculpating himself, and ascribing the misfortunes of the last year to neglect in omitting to inform the ministry of the Crown-Point expedition, with which they had not been made acquainted, as late as the 17th of May, the day on which he left England, although it had been resolved on by the General Assembly of Massachusetts Bay on the 16th of February;—to the number of forces being less than had been agreed on, and the troops being inferiour to those of former years, which had obliged him to join them to the regulars;—to the difficulties he met with in connecting these different bodies of troops, before he could effect which, the news of the capture of Oswego and other possessions on the lakes arrived;—to the true state and circumstances of the forts and garrisons there not being represented to him by his predecessor;—

predecessor ;—to his call for aid not being attended to otherwise than by votes of assemblies, which effected nothing, until the arrival of the Highlanders, with whom he was enabled to reinforce the provincials, and by that means, to save them from an attack, and probably a defeat ; and so the whole country from being laid open.

He proposed a contribution from the Colonies of New-England of 4000 men only, which he conceived they could not think much of, considering the expense of the crown in supporting so many troops for their defence ; and he gave assurances that they should be employed in such service, as might be most congenial to their habits.

Thus were the governments of New-England exhorted to their duty by a reproach upon their past services ; and their troops undervalued to exalt the reputation of the foreign regulars, without considering that the only brilliant achievements during this war had been effected where the provincials alone opposed the enemy, or were aided in a very trifling degree by the king's troops ; and that success had as yet reced-
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ed from the English arms, almost in a direct proportion, as the latter had been introduced to the service.

It having been settled that the troops were to be supplied with provisions, ammunition, and artillery stores at the expense of the crown, and that they were to serve for one year, without local restriction as to any particular part of the continent, the commissioners agreed to raise the number required. A difficulty sprung up, as had happened, in fact, for several years past, respecting the proportions of the respective Colonies. Massachusetts laboured under a much greater burthen for the defence of the frontiers, than any other Colony. Eight hundred men were employed by her in this service beside three hundred in vessels of war. This consideration out of the question, her quota of men amounted to seventeen hundred and fifty. These the commissioners dared not make an absolute agreement to raise, but undertook to recommend it. Lord Loudoun, little pleased at separate propositions from any Colony, urged another apportionment on his own authority ; and at his motion, it was settled, that Massachusetts should
raise

raise 1800 men, Connecticut 1400, Rhode-Island 450, and New-Hampshire 350, to be mustered by the 25th day of March. He likewise proposed many particular arrangements: that the men should be raised in companies of 120, including four commissioned officers; that there should be one officer to command from each Colony, who might convey the orders of the Commander in Chief to his troops; that offences not of a heinous nature, should be tried by provincial officers alone, and higher crimes by them and regular officers conjoined, with various other regulations.

Whilst the plan for raising and forwarding the forces was in execution, the Hon. Spencer Phips, Esq. Lieutenant-Governor and Commander in Chief of the Province, died at Cambridge, by which the executive branch of the government devolved upon the major part of the Council, according to the Constitution. He was born of parents in private life, and was adopted by and made heir to Sir William Phips, the first governor of the Province, under its last charter. He rose through successive offices to that of Lieutenant-Governor in the year

April 4.

1732;

1732; and continued to hold it without interruption, acting several times as Commander in Chief, until his death. He is characterized as a prudent, diligent, faithful, upright man in the various stations which he sustained.* It is said that Governor Shirley's discountenancing his being present in Council, when not elected a member of that body, gave him a disgust, and led him to much retirement, and an aversion to the display of his office upon other occasions.

The Council proceeded in the necessary affairs of the government, and having raised all the men required by Lord Loudoun, effected their march, under the command of Col. Joseph Frye, to the place of rendezvous, though not without great difficulty, from the want of money.† A letter
was

* Dr. Appleton's Sermon on his death.

† The establishment for the pay of the forces was as follows:

A R M Y.

	£.	s.	d.
Colonel, - - - - - per month,	18	0	0
Lieutenant Colonel, - - - - -	15	0	0
Major, - - - - -	12	0	0
Captain, - - - - -	8	0	0
First and Second Lieutenant, - - - - -	5	0	0
Ensign, - - - - -	3	10	0
Chaplain, - - - - -	6	8	0

was received from Mr. Bollan, informing of the appointment of Thomas Pownall, Esq. to the government of the Province ; which induced

	A R M Y.	£.	s.	d.
Surgeon, - - - - -	per month,	10	0	0
Surgeon's Mate, - - - - -		5	6	8
Sergeant, - - - - -		2	3	1
Corporal, - - - - -		1	18	7
Drummer, - - - - -		1	18	7
Private, - - - - -		1	16	0
Commiffary, - - - - -		8	0	0
To the first Officer over the forces, in addition to Colonel's pay, for his table, - - - - -				
		100	0	0
His Secretary, - - - - -		8	0	0
Surgeon General, - - - - -		14	0	0
His Mate, - - - - -		5	11	0

N A V Y.

Captain, - - - - -	per month,	8	0	0
Lieutenant, - - - - -		5	0	0
Master, - - - - -		4	0	0
Pilot, - - - - -		4	0	0
Chaplain, - - - - -		3	10	0
Mate, - - - - -		3	0	0
Carpenter, - - - - -		3	0	0
Gunner, - - - - -		3	0	0
Boatfwain, - - - - -		3	0	0
Cooper, - - - - -		2	10	0
Armourer, - - - - -		2	10	0
Coxfwain, - - - - -		2	10	0
Boatfwain's Mate, - - - - -		2	5	0
Steward, - - - - -		2	5	0
Cook, - - - - -		2	5	0
Quarter-Master, - - - - -		2	5	0
Seaman, - - - - -		2	0	0

induced the Council to determine upon postponing important business until his arrival, and to recommend to the House to take measures for his reception.

Governor Pownall had been private secretary to Sir Danvers Osborne, Governor of New-York; and was at this time Lieutenant-Governor of the Province of New-Jersey. His brother, John Pownall, Esq. was one of the secretaries to the lords of trade, and had great influence on American affairs. When he first came over to the country, he was received into a confidential connexion with Governor Shirley, who sent him to the government of New-York for the purpose of soliciting their concurrence in the plan against Crown-Point: yet he could not forget his disappointment, occasioned by a refusal of his request to be admitted into the Council at Alexandria, and he ranged himself in opposition to his friend, adhering to the party of Lieutenant-Governor De Lancey and Sir William Johnson, who laboured for Shirley's dismissal: report adds that he anticipated the communications of his patron to the ministry as originating from himself. It is highly probable
from

Review of
the military
operations
in North
America,
&c. 1758.

from his connexions and prospects, that he considered his appointment to this government as a temporary measure, introductive of further promotion, and subservient to personal views. However this might have been, he entered into the cause of the country with spirit ; and if he displayed his own merit in his account of transactions conducted under his administration, they were not the less promotive of the public interest. He went over to England in the latter end of the year 1756, immediately after the dispatches containing the plan of operations for the next campaign ; and is said to have solicited a large reinforcement of troops for the prosecution of the war in America. With these he returned, after impressing a favourable opinion on the mind of the agent of the General Court, by the strongest assurances of his determinations to promote the prosperity of the Province, and by expressing the highest regard for its liberties and charter privileges.

Pownall's
Administration of the
British Colonies.

Bollan's
M. S. Letter, March
12, 1757.

The fleet in which he embarked and which brought the forces, with George Lord Viscount Howe, to Halifax, was commanded by Admiral Holbourn. After touch-
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1758

ing at that place Governor Pownall arrived at Boston on the 3d of August, when his commission was publicly read.

The addressees were not less numerous, nor less flattering perhaps, than upon any former occasion of the same nature. In a few days he performed the ceremony of taking possession of Castle William. The garrison was then commanded by Sir William Pepperell, who, upon presenting the keys, and observing that *that* fortress was the key of the Province, gave the Governor an agreeable opportunity of complimenting this conqueror of Louisbourg: "The interest of the Province," he replied, "is in your heart; I shall therefore be always glad to see the keys of it in your hands."

Bost. Gazet.

The commencement of Governor Pownall's administration happened at the most inauspicious period of the war. The enemy, after having made a very formidable, though unsuccessful, attack on Fort William Henry in the month of March, advanced again in the month of July, previously to the reinforcing army of the English reaching the continent, with about 9000 regular

lar and irregular troops, and invested the fort on the third of August.

General Webb, the commander, perceiving the motions of the enemy towards him, sent from Fort Edward for the immediate reinforcement of the additional number of men which was to be furnished in case of emergency. The Governor, although he had arrived only a few days in the Province, immediately ordered forward the troop and horse, and put a fourth part of the militia under the command of Sir William Pepperell as Lieutenant-General of the Province, with orders to assemble the troops at Springfield and garrison the frontiers ; or, if expedient, with *their exsuit* (which was made necessary by the charter, the General Court not being in session otherwise to give authority) to send off reinforcements where required. He gave orders also to form a magazine at the place of rendezvous ; and if the enemy should approach the frontiers, to order the wheels to be struck off from all waggons west of Connecticut River ; to drive off all horses, to order in all provisions that could be brought away, and to destroy the remainder.

Col.

Col. Munroe, who commanded the garrison at Fort William Henry, consisting of between 2000 and 3000 regulars, resisted the enemy with spirit, until the 9th of August, when several cannon having been burst, and the ammunition much exhausted without great effect, a capitulation was entered into, by which the garrison was allowed to march out with the honours of war, and to be protected against the Indians, until within the reach of the English at Fort Edward. The breach of this capitulation, whether voluntary or unavoidable on the part of the French, was a most interesting subject of reproach at the time, and long continued to fill the British Colonists with indignation and horror. A great part of the prisoners were pillaged and stripped, and many of them murdered by the savages. Some reached Fort Edward in a scattering manner, and others returned again to the French. The consequences of this surrender by the loss of ordnance, ammunition, provisions, the shipping on Lake George, and above all, the respect of the Indians, was truly disastrous.

Such was the arrangement of the regular forces that this formidable invasion was only
to

to be repelled by mustering the militia, which was necessarily a slow operation. From Massachusetts Worthington's, Williams's, Ruggles's and Chandler's regiments marched under the orders aforementioned; and the service was so generally and zealously entered into, as to leave the western part of the Province in a weak and dangerous state in case of an attack. The enemy not proceeding against Fort Edward, the march of the militia was accompanied with no other effect than the operation which it may have had in conjunction with other causes to prevent so important a blow.

Whilst the French were about moving in such force against the forts at the westward, Lord Loudoun and Sir Charles Hardy embarked at New-York with 6000 men upon an expedition against Louisbourg from Halifax. This attempt, undertaken at so much expence to the trade of the Colonies by means of an embargo which it occasioned, and to the arms and honour of the nations, it was at last agreed from the increased strength of the French at Louisbourg, to postpone to the next year; and notwithstanding the Province of Nova-Scotia was galled

M. S. Letters from Gen. Webb, Capt. G. Christie, Gov. Pownall and others on the files of the Gen. Court.

galled by the French, who fled from the New-England troops in the year 1755 from the mouth of the River St. John, and up the Petjecojack, where they had made a fixed stand; and were always ready to join either Indians or Canadians for the purpose of invading the English settlements, yet without attempting even to dislodge them, on the 31st of August the commanders returned to New-York to realize the triumph of the French. They brought with them such a body of troops as, at an earlier period, might have prevented it, but which could now effect nothing more than to save expense, by dismissing the provincials, excepting a few companies of rangers.

Bollan's Letter to Pitt,
May 4,
1758.

Notwithstanding Lord Loudoun had contended little with the enemy in the field; yet he was much embarrassed by a controversy which he entered into with the government of Massachusetts, and which must have been less grateful to a military commander than a conflict with the sword. The subject of the dispute was on the right of quartering troops. Upon information from the Governor, that a regiment of Highlanders was expected in Boston, the
General

General Court provided barracks for the accommodation of 1000 men at Castle-Island, not as an expence which could *of right* be demanded of the inhabitants, but as an advance of money on the national account. Soon afterwards several officers arrived from Nova-Scotia to recruit their regiments, which could not be done, if they were to be lodged in the barracks at the Castle. They made application to the Justices of the Peace to quarter and billet them, as provided by act of Parliament; but met with a refusal, on the principle, no doubt, *Nova* that the act did not extend to this country. In consequence of this Lord Loudoun sent a letter (Nov. 15, 1757) insisting peremptorily on the right demanded, as the act for quartering did, in his opinion, extend to America, and every part of his Majesty's dominions, where the necessities of the people should oblige him to send those troops, either for the defence of those dominions, or the protection of his subjects. After descanting largely on the question, he concluded in the following decisive manner: That having used gentleness, patience, and confuted their arguments without effect, they

Loydoun

they having returned to their first mistaken plan, their not complying would lay him under the necessity of taking measures to prevent the whole continent from being thrown into confusion. As nothing was wanting to set things right, but the Justices doing their duty (for no act of the Assembly was necessary or wanting for it) he had ordered the messenger to remain only 48 hours in Boston; and if, on his return, he found things not settled, he would instantly order into Boston the three battalions from New-York, Long-Island, and Connecticut; and, if more were wanting, he had two in the Jerseys at hand, beside those in Pennsylvania. As public business obliged him to take another rout, he had no more time left to settle this material affair, and must take the necessary steps before his departure, in case they were not done by themselves.

What an honourable employment would it have been for a British army, when the enemy was beating them from their outposts, to have made a retrograde march upon the Colonists, whom they came to protect, and whose levies and militia in fact protected *them*, in order to establish the right of recruiting

recruiting officers to be billeted upon the inhabitants of Boston under an act of Parliament !

The General Court passed a law. This law was short of Lord Loudoun's expectations, which he failed not to communicate by a letter, which the Governor laid before the Assembly. They answered it by an address to his Excellency, in which the spirit of their forefathers seemed to revive. They again asserted that the parts of the act of Parliament relating to this subject did not extend to the Colonies and Plantations ; and that they had therefore enlarged the barracks at the Castle to accommodate the number recommended, and passed a law for recruiting parties as near the act of Parliament, as the nature of the country and its settlements would admit : that such a law was necessary to give power to the magistrates, and they were willing to make it, when the troops were necessary for their protection and defence. They asserted their natural rights as Englishmen : that by the royal charter, the powers and privileges of civil government were granted to them : that the enjoyment of these was their support

port under all burdens, and would animate them to resist an invading enemy to the last breath, as their loss or hazard would dispirit them. If their adherence to these rights and privileges in any measure lessened the esteem which his Lordship had conceived for them, it would be their great misfortune ; but that they would have the satisfaction of reflecting, that both in their words and actions they had been governed by a sense of duty to his Majesty and faithfulness to the trust committed to them. This address being forwarded with assurances from the Governor, Lord Loudoun affected to rely on them for making the matter of quarters easy in future. He countermanded the march of the troops, and condescended to make some conciliatory observations respecting the zeal of the Province in his Majesty's service. For these he received a very ample return by a message from the two Houses to the Governor, wherein they explained their law to have been made not to enforce an act of Parliament, but to supply measures in a case where it did not reach them : That they were willing by a due exercise of the powers of civil government, to remove as much as might be all pretence of
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the necessity of military government. Such measures they were sure would never be disapproved of by the Parliament of Great-Britain, *their dependence upon which they never had a thought of lessening*: That the authority of all acts of Parliament, which concerned the Colonies and extended to them, were ever acknowledged in all courts of law, and made the rule of all judicial proceedings in the Province; that there was not a member of the General Court, nor did they know of an inhabitant within the bounds of the government, who ever questioned this authority.

To prevent any ill consequences that might arise from their holding such principles, they then utterly disavowed them, as they should readily have done at any time past, had there been occasion for it: and they prayed that his Lordship might be acquainted therewith, that they might appear in a true light, and that no impressions might remain to their disadvantage.

So condescending was the termination of a dispute, which seemed to rise to haughtiness and asperity on one part, and to zeal
and

and independence on the other. Mutual interest, without doubt, conducted it to this channel. After being worsted on the frontiers, and baffled in a projected expedition against Louisbourg, Lord Loudoun would have made a lamentable end of his command, by continuing a controversy with the principal Colony in the war upon a constitutional question, which perhaps could not have been settled with less difficulty, than those of a like nature in preceding times : whilst the Province on the other hand was not unmindful of the necessity which it was under, to conduct on every subject in such a manner as not to forfeit the expected reimbursement from the Parliament.

The Governor had not any agreeable communications to make to the General Court, upon his convening them in the middle of August. He shewed that the controversy between France and Great-Britain was no longer on the question of boundaries, but involved the fate of the two governments : that on the Colonies the fleets greatly depended ; and on the naval dominion of the mother country depended her freedom, and the existence of these her Colonies

onies as a people. He laid before them evidence to shew the circumstances of the country, when he arrived in it, the disastrous events which afterwards took place, and the subsequent measures which he pursued : and communicated also Mr. Secretary Pitt's and Vice-Admiral Holbourn's views of the necessary aid to the navy.

The military arrangements for the year having already been made, and the season being too far advanced to admit of entering on any additional plan of operations, little seemed to be left for the legislature to do for remedying the misfortunes which had happened. They strengthened the scouting parties on the frontiers, and provided quarters at Castle William for 1000 Highlanders, who were expected from England. With respect to the Governor, after a congratulatory address from each House, they granted £300 to defray the charge of transporting his equipage, and the usual sum of £1300 for his support. The distresses brought upon the Province by the war had deranged and ruined the affairs of so many persons in trade, that the General Court found it necessary to pass a bankrupt act, subject

subject however, as will be hereafter more fully observed, to the negative of the King, by the general reservation in the charter. The session was closed by a message to the Governor respecting the provision which had been made for quartering troops, in which it was observed, that there were certain limits which the people would not be able to exceed ; and unless his Majesty would be graciously pleased to cause a part of the great sums which had been advanced, and for which the Province was in debt, to be reimbursed, that it would be impossible for the government to contribute to the war in the proportion which it had already done.

Another session was held in November, when darkness seemed to be wholly spread around the political horizon. The enemy possessed almost every post ; they were masters of the communication through the whole continent ; and having an ascendancy over the Indians, by means of their intimate alliances with them, might be said to command the country. All that could be opposed to such an adverse state of affairs was recommended by the Governor ; to

cover

cover the frontiers : to make the necessary laws for rendering the militia a real defence : to examine into the resources of the country ; and to regulate trade on the principles of industry and economy. As to offensive measures, he observed, that he knew they would be useless, and advised the General Court to save the strength, to collect the force, and to treasure up the money of the Province, until God should call them out one and all, to wreak his vengeance on the breakers of the peace, the French in Canada.

The Assembly aiming at a system of defence by the old approved plan of a union, voted to send expresses to each of the New-England governments to meet by commissioners at Boston to concert measures for their mutual protection under such imminent danger. This plan, as will be mentioned in the events of the next year, was checked and defeated, upon principles somewhat similar to those of 1754 : and a better security was realized in the economical management of the public finances, which, upon the settlement of accounts, left a balance of more than £92,000 in the Province treasury, after discharging the ordinary expenses.

Although a detail of the Indian warfare, from the peculiar horror which it inspires, be highly interesting to the people of the time in which it may happen, yet to subsequent generations, when the importance of transactions is measured by their real consequences, it becomes tedious and trifling. Faithfulness, however, to the undertaking which we have begun, requires that we should not wholly omit the relation of these events. We shall therefore observe in short, that the Indians on the frontiers discovered this year, their usual lurking spirit of mischief, and not without receiving chastisement. They communicated with the fort at St. George's, by flags of truce, in such numbers as excited the apprehensions of the commander. He therefore previously to the proposed return of a large party, sent out twenty men in the night time, who came upon a body of the Indians, and firing ensued on both sides. In the result the garrison came off with a scalp, having one man only slightly wounded.

CHAP. II.

*Louisbourg taken by General Amherst 1758—
Fort Frontenac taken by Col. Bradstreet—
French evacuate Fort Du Quesne—Unsuccessful
attack on Ticonderoga—Death of
Lord Viscount Howe—General Court of
Massachusetts erect a monument to his mem-
ory—Attempt of the French on the fort at
George's defeated—Bankrupt law disap-
proved by the King—Plan of military ope-
rations for the year 1759—Number of
troops voted to be raised in Massachusetts—
Message to the Governor, stating the cir-
cumstances of the Province—Fort Pownall
on Penobscot river erected—Success of the
British arms in Canada.*

1758

THE gloom, which hung over the public affairs in the winter of 1757, seemed to be dissipating at the preparations for the ensuing year. The chagrin and indignation excited at so many unsuccessful campaigns roused the courage of the people, and martialled the strength of the British nation, so as to mature it for action, and command that

1758.

that crisis which turned the future course of the war in their favour. The supplies, which the French designed to send for the support of their troops in Canada, were, in some instances, blocked up in their ports at home, and in others, captured at sea. Admiral Boscawen arrived early at Halifax with a fleet, carrying about 12,000 land forces, commanded by General Amherst with the aid of General Wolfe, to invest Louisbourg. The troops of the last year formed an army of 10,000 men, headed by Major General Abercrombie, who succeeded Lord Loudoun as Commander in Chief, to advance against Ticonderoga. An army of 5000 proceeded in the tract of the unfortunate Braddock, with better auspices, against Fort Duquesne, under General Forbes: and, in order to give vigour to the combined operations of the regulars and provincials, the distinctions between their officers were taken away.

The spirit of the mother country was successfully rivalled in the Colonies. On the receipt of Mr. Pitt's letter, the General Court of Massachusetts unanimously voted to augment their men to 7000, the whole
number

number required, of whom 6925 actually marched into the field, notwithstanding the large proportion of artificers, seamen, and others, which they had already furnished for the service. They also promised each man, in addition to his pay and bounty, £10 upon his return, provided Canada should be reduced. A subscription, which had been opened for encouraging enlistments, was run up to near £20,000 in less than twenty-four hours. The regiments were completed early in the month of May. The transports for carrying the troops to Halifax were manned and prepared for sailing in about fifteen days after they were engaged. In short, near one third of the effective men of the Province were in military service in some mode or other : and all this zeal was manifested after the most depressing disappointments, and a burden in taxes, which is said to have been so great in the capital, as to equal two thirds of the income of the real estates.

Bost. Gaz.

Gen. Court
Records :

The attention of the whole country was now drawn towards Louisbourg, the field in which the arms of New-England had reaped so much honour in the last war.

On

On the 28th of May Admiral Boscawen sailed from Halifax with a large fleet, and an army under the command of General Amherst, to invest and capture this fortress. He arrived in two days, and the landing of the forces, in which the New-England troops did honour to themselves and their country, was effected on the 8th of June. The garrison surrendered as prisoners of war on the 27th of July, after losing upwards of 1500 men, and beholding the city almost an heap of ruins. General Amherst embarked with about thirty transports, filled with the victorious troops, and encamped on the common in Boston, the latter end of August, on his march, which he pursued after three days' rest, to the western forts. The extraordinary rejoicings in England at this victory, seemed to revive the honour of the northern British Colonies, as the former conquerors of Cape Breton. The trophies taken were brought in procession from Kensington to St. Paul's, and a form of thanksgiving was ordered to be used in all the churches.

The success of the English arms did not terminate in the taking of Louisbourg. Col. Bradstreet being detached by General Abercrombie

Gov. Lawrence's Let.

Bost. Gaz.

Abercrombie with 3000 men, of whom only 155 were regulars, took the important fort of Cadariqui or Frontenac, and the French evacuated Fort Du Quesne on the Ohio, after a battle with an advanced party of General Forbes's army. Still however, Ticonderoga, the great object of New-England's efforts, remained to scourge the country. An attack upon the enemy's lines there proved unsuccessful, at the expense of 1608 regulars and 334 provincials, who were either killed or taken. Among the individuals, who fell in this ineffectual expedition of General Abercrombie, none was more lamented than Lord Viscount Howe, to whose services and military virtues the General Court paid a respectful tribute, by granting £250 sterling for erecting a monument to his memory.*

The

* This monument was opened in Westminster-Abbey. The following is the description of it. On the top is a trophy of arms in fine white marble; and on a flat pyramid of black marble, are his Lordship's arms, coronet and crest in white marble. On the top of the monument sits the figure of a woman in a melancholy position, representing the Province of Massachusetts Bay, and under it is the following inscription: The Province of Massachusetts Bay, in New-England, by an order of the Great and General Court, bearing date Feb. 1st, 1759, caused this monument

1759

Aug. 14.

The force of the English being generally irresistible, where it operated in its full strength, the French made attempts to distress the frontiers, which were uncovered by means of the more distant operations. Uniting themselves with the Indians of St. John's and Penobscot, they planned an attack upon the fort and settlements at George's. Governor Pownall being made acquainted with this design, and having at command some men, who were intended to be joined with the western forces, immediately embarked with them ; and took the necessary quantity of stores and ammunition on board the Province ship King George and the sloop Massachusetts. These troops he threw into the fort most opportunely ; as, on the day after he left it, the attack was actually made by about 400 of the enemy : but from these expeditious and spirited measures,

to be erected to the memory of George Augustus, Lord Viscount Howe, Brigadier-General of his Majesty's forces in America, who was slain July 6, 1758, on his march to Ticonderoga, in the 34th year of his age ; in testimony of the sense they had of his services and military virtues, and of the affection their officers and soldiers bore to his command. He lived respected and beloved ; the public regretted his loss ; to his family it is irreparable.

Gent. Mag. July, 1762.

ures, the garrison was so well prepared to receive them, that they were unable to make any impression. This service was acknowledged in grateful terms by the General Court, and was thought of so highly by Mr. Pitt, as to induce him to assure the Governor, that his activity and diligence in it had met with the King's most particular approbation.

Gazette.
Pownall's
Speech.
Pitt's M. S.
Letter.

This attempt upon the fort at George's together with an attack equally unsuccessful upon a small fort at Colrain, and another at Medumcook where eight men were killed or captured, appears to constitute the whole exertions of the Indians on the frontiers the present year.

In the legal history of a commercial country, the fortune of the only bankrupt law, which could ever be obtained, becomes a matter of curiosity. This law, having been laid before the King for the royal approbation, agreeably to the charter, was referred to the lords of trade. After mature consideration, they gave it as their opinion, that although a bankrupt law be just and equitable upon its abstract principle, yet it had
always

always been found in its execution to afford such opportunities for fraudulent practices, that even in England, where, in most cases, the whole number of creditors were resident on the spot, it might well be doubted, whether the fair trader did not receive more detriment than benefit from such a law. But that if a like law should take place in a Colony, where (as they were informed) not above one tenth part of its creditors were resident, and where that small proportion of the whole, both in number and value, might (as under the present act they might) upon a commission being issued, get possession of the bankrupt's effects, and proceed and make a dividend before the merchants in England, who made the other nine tenths of the bankrupt's creditors, could even be informed of such bankruptcy, it was easy to foresee, that such a law could be beneficial to the very small part of the creditors resident in the Colony only, and that the rest of them, who resided in England, would be exposed to frauds and difficulties of every sort, and might be greatly injured in their properties; and, for these reasons that the act should forthwith receive his Majesty's disallowance. This opinion prevailed,

prevailed, and the law was accordingly dis-1757
approved by the King, to the great inconvenience of many debtors, who had actually surrendered their effects under it. The General Court were under a necessity of interfering in their behalf, by ordering the actions brought against them to be continued until the beginning of the year 1761, when a law was made for finishing such commissions, as had been commenced during the existence of the late rejected act, providing remedy for bankrupts and their creditors.

If a sense of shame and defeat excited a 1759
spirit of exertion in Great-Britain the last year, the success which had followed gave an extended operation and renewed vigour to her efforts in one thousand seven hundred and fifty nine. A plan was pursued to assail the French in America, in every direction, and by a connexion of all the parts to transfuse the effect of the success, which could not well fail to happen in some quarter, throughout the whole system. The destruction of the enemies' post at Ticonderoga, so unsuccessfully attacked by General Abercrombie, was assigned to 12,000 men under
General

General Amherst, with a view of piercing into Canada by the Lakes George and Champlain and the River Sorell down to Quebec. The capture of this city, by advancing up the St. Lawrence, was assigned to an army of about 9000 men, under the command of General Wolfe, and a fleet under Admiral Saunders. The important pass at Niagara, which is the throat of the north-western division of the American Continent, was assigned to Brigadier General Prideaux, with the aid of Sir William Johnson, who commanded the provincials and Indians.

The Colonists, young and exhausted, could not keep pace with the parent country in a war now protracted to a fifth campaign, without a more prompt and punctual aid of money than she had afforded them. The compensation granted to the Province of Massachusetts Bay, for provisions furnished to the King's troops in the year 1756, had not been remitted; the exertions of 1757 were never noticed; nor had the vast and disproportionate expenses of the last year been as yet, in any degree, reimbursed. The delays and precarious decisions of the public offices in apportioning the grants, and deliver-
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ing the money, when apportioned, gave disgust and discouragement. Add to this, that the strong expectation of the strenuous effort in the preceding season being conclusive, greatly abated the effect of the success which actually ensued.

When therefore the Governor recited to the General Court his proceedings in the last year, the promise, in their answer, to engage in further measures, was coupled with an intimation of their reliance on the King's bounty for relief. At the next session which was held in the month of March, he stated to them that the kingdom of Great-Britain, at an unbounded expense, and by the most vigorous efforts, was resolved to protect and maintain *the cause of its Colonies*; and his Majesty was determined to make a final decision of this contest with the enemy in America: that compensation had been made, and would be made, for this year's services, even in that which was peculiarly their own cause; that he had acquainted his Majesty with their address, shewing their readiness to aid in promoting his service to the utmost of their abilities: that this was a crisis whether the French usurpations should

should be erected into a kingdom, or whether the British empire in America, should be established on a solid and lasting basis, which would depend on the taking of Canada, or being frustrated in the attempt.

Notwithstanding this forcible and interesting display of the King's views, the General Court, at present, voted to raise only 5000 men, and subjoined to the vote their reasons for raising no more, founded on the distresses of the Province by means of the former disproportionate levies, many of the inhabitants being engaged as rangers and batteau-men, and the weight of the debt incurred, which was so great as to render it extremely difficult to procure money for further service. In these reasons the Governor acquiesced for the present, expecting that they would raise such additional numbers as might be requisite in the course of the year, and granted a recess until after the time assigned for raising the levies, upon the General Court's assurances, that they would exert themselves to the utmost that the state of the government would admit. Before the next session letters arrived from General Amherst, informing that an expedition up
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the St. Lawrence was intended, which would take away a part of the garrison of Louifbourg, and that this was to be replaced by a battalion of provincials of not less than 1000 men, to remain until the end of the campaign ; and that it would be necessary that a body of provincials also should join what might remain of the King's regular troops for the protection of Halifax, the Province of Nova-Scotia, and the bay of Fundy for the same time. The General also added that the abilities of the Province certainly exceeded 5000 men, and hoped that the Court would consider the matter further, as this expedition must, in all human probability, put an end to the war, and compensation had been promised by the Secretary of State, in case they should do their best.

These letters produced a vote for raising 1500 additional men, which was accompanied with a message to the Governor, stating the circumstances of the Province so particularly, as to render it too useful an historical paper to be abridged. It was as follows :

“ The several reasons and motives which your Excellency has from time to time laid
before

before the two Houses, in order to induce an augmentation of the forces for the service of the present year, have been maturely weighed and considered by us.

“ We have likewise had an opportunity, in the recess of the Court, of acquainting ourselves with the state of the several parts of the Province, and its ability for raising an additional number of men. We acknowledge with gratitude, that the interest and ease of the people has been consulted by your Excellency in making the last levy, as far as could consist with his Majesty's service, and the purposes for which the men are raised. The distress brought upon the inhabitants is notwithstanding extremely great. The number of men raised this year, we are sensible, is not equal to that of the last. The Assembly then made the greatest effort that has ever been known in the Province. They looked upon it to be their last effort; they had no expectations that it could be repeated, and it was really so great as to render it impracticable for us to make the like a second time. The number of our inhabitants is since then much lessened: some were killed in battle; many died by sickness,

sickness, while they were in service, or soon after their return home : great numbers have enlisted as rangers, artificers, recruits in his Majesty's regular forces, and for other branches of the service.

“ The unprecedented charge of the last year also tends to increase the distress of the Province. The expense of the regiments raised for his Majesty's service amounted to near one hundred and twenty thousand pounds sterling : besides this, the inhabitants of the several towns in the Province, by fines, or by voluntary contributions to procure men for the service, paid at least sixty thousand pounds sterling more ; which is in all respects as burdensome, as if it had been raised as a tax by the government. The defence of our own frontiers, and the other ordinary charges of government, amount to at least thirty thousand pounds sterling more.

“ Because the Province last year raised seven thousand men, it is inferred that it is able to raise the same number this, and no allowance is made for its being so much reduced in its estate and number of inhabitants.

“ We have generally been the first in proposals for public service, and have determined what force we would employ : other governments have followed after us in just what proportion they pleased ; and we wish it had been an equal one. We are now lessened, and they are increased ; and we are yet urged to continue the same proportions. We have always chosen to avoid entering into the consideration of quotas or proportions, but we seem now obliged to do it. We conceive that in order to determine a just proportion, the wealth, the number of inhabitants, and the charges of each government for its immediate defence, are all to come under consideration. If this be allowed to be a just rule to determine by, we are sure, that not only in all past years, but in this present year also, we have done more in proportion to the general service, than any one government upon the continent.

“ We know of no quota settled for each Colony : the agreement made at Albany by the commissioners in the year 1754, has been generally urged as a rule of proportion since that time. But it was agreed by the same commissioners, that regard should always

ways be had to the special services of any Colony for its immediate defence. We are obliged to keep six hundred men in pay in defence of our frontiers and sea coasts. This charge some of the other governments are wholly free from, and the rest subject to in a very small degree. Exclusive of the six hundred men aforesaid, we have already raised five thousand men for the general service. Connecticut has raised in proportion to the five thousand only according to the Albany plan, without any regard to the six hundred. Every other government falls short even of that ; so that we have this year already done more in proportion than any of our neighbours.

“ We are told that we are the leading Province : we have been so for many years past ; and we have been as long unequally burdened. We have borne it patiently, although we have seen our inhabitants leaving us, and removing to other governments to live more free from taxes ; and a few years ago for this reason alone, four of our principal towns refused any longer to submit to our jurisdiction, and another government found

found a pretence for receiving them, and they are not yet returned to us.

“Under these distresses, we are still willing to afford every reasonable aid in our power. A further impress would distress and discourage the people to such a degree, that as well in faithfulness to the service, as to the particular interest of this Province, we are bound to decline it. But great as our burdens are, we have now engaged a bounty more than double what has ever yet been given by the Province, in order to procure a voluntary enlistment of fifteen hundred men over and above the five thousand already raised; and we have reason to hope that this bounty will be sufficient, and have the effect your Excellency desires.”

The river of Penobscot offering an important passage into the Atlantic Ocean which might be seized by the French, and becoming also a natural rout for the Indians into the Province since the fortifying of the river St. John, Governor Pownall thought it a fortunate occasion to take possession of that country, and to secure it by erecting a fort. In executing this service he happily
availed

availed himself of the aid both of the crown and the Province, and notwithstanding the pressure of the public burdens, and the great complaints that existed in Massachusetts relative to the erecting and maintaining of forts, he received the thanks of the General Court, for the manner in which he economized the public money. He first procured the consent of General Amherst to reimburse the expense of erecting this fortress, and that the men to be employed in the work should be reckoned as a part of the number voted to be raised for the army. The General Court then granted 400 troops to take possession of the country, ordering at the same time, that the forts at St. George's and Pemaquid should be dismantled at the peace.

With this force the Governor repaired in person to Penobscot, and completed his work without opposition. He sent to the tribe of Indians to inform them of his purpose, and to invite them to defend their land, if they intended it. He told them that should they kill an Englishman in future, they should be forced to fly from the country, which he would sweep from one end to the other, and hunt them all out. That he
fought

sought not their favour, but pitied their distress, and that if they would become English, and live near the fort, he would protect them, assign them planting ground, and permit them to hunt as usual. After this he returned without any remarkable event taking place, excepting the loss of Brigadier General Waldo by a natural death.

The cost of the fort amounted to £4969 17s. 2d. The Governor shewed that the same men who were employed in it, had they joined the army in general, would have cost £1803 10s. 4d. more. Upon which the House voted him their thanks for his wise measures in securing the country of Penobscot; and justly pronounced Fort Pownall to be, as he had called it, the best and least expensive fortress of any that had been erected in the Province. The troops at Brunswick and Pemaquid, and the scouting parties at the lodgments on the western frontiers were now dismissed, and a garrison of 100 men voted for Fort Pownall. The Court also granted £200 to the Governor, in addition to the usual salary of £1300, for his extraordinary services on this and other occasions.

The distant and important operations in Canada almost wholly relieved the suffering inhabitants of the frontiers of the Province, and indeed by a train of successes, gave a pledge of the future ease and security which was about to spread over all the British Colonies. The fall of Crown-Point, Ticonderoga, Niagara, and, above all, the capture of Quebec, closed the year with universal rejoicing and well founded hope that the toils of war would shortly cease throughout the land.

1760

C H A P. III.

Number of troops voted to be raised in the Province for the year 1760—Great fire in Boston—Peace concluded with the Penobscot Indians—Popularity of Governor Pownall—Embarks for England—Controversy between the Council and House respecting the mode of passing the Treasurer's accounts—Reasoning of Mr. Agent Bollan on the rule for apportioning the grants of Parliament among the several Colonies.

1760.

NOTWITHSTANDING the fruits of victory began to ripen at the capture of Quebec, yet great exertions were supposed to be necessary to ensure a full harvest to the British arms in the next campaign, as the French still remained in force in Canada, and had nearly retrieved the loss of their capital. Governor Pownall, wrought up with the eager and just expectation that the blow so forcibly struck would be decisive, if immediately followed by another, without allowing the enemy an interval of relief, made use of his influence with the usual success to lead the General Court into the earliest

liest preparations for raising their proportion of the army. The Province already supplied troops to defend Louisbourg, Halifax, and Lunenburg, and entirely garrisoned Annapolis, Fort Cumberland at Chignecto, and Fort Frederick at St. John's. For the encouragement of these, four pounds were voted for each private, and one month's wages to each officer who remained in garrison after the first of November; the pay of the whole was to be continued until the first of May following; and in order to reconcile them to so long an absence on duty, they were promised a discharge as soon as the season would admit. A bounty of nine pounds was then voted for every man, to the number of five thousand, who would enlist for another campaign: And these terms received great weight from the high credit of the Treasury, which had been replenished by a remittance of upward of £20,000 reimbursement money, and was managed with the exactest economy. These measures anticipated the King's wishes, as expressed in Mr. Pitt's letter communicated at the next session, in which he observed that his Majesty, having nothing at heart so much

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1760 as to improve the great and important advantages gained the last campaign, expected that they would make provision for the levy, pay, and clothing of at least as large a body of men, as they then did, and even as many more as the number of inhabitants might allow ; and that to encourage it, strong recommendations would be made to Parliament next year, to grant a proper compensation for such expenses, according as the active vigour and strenuous efforts of the respective Provinces should appear justly to merit.

In the midst of the burdens and distresses of the war, there happened the greatest misfortune of its kind ever known in the capital, by the conflagration still denominated the Great Fire, which raged so violently as, in about four hours, to destroy nearly a tenth part of the town. It began by accident in that quarter of Cornhill, which is opposite to Williams's court, and not only swept away the buildings in that direction to the water, but, widening to the southward, and taking in the lower part of Milk-street, it extended to Fort-Hill and the South-Battery, and then turning upon King-street ran from the corner opposite to the Bunch of Grapes Tavern,

Tavern, and destroyed the buildings on the south side of that street, almost down to the Long Wharf. There were consumed 174 dwelling houses, 175 warehouses and other buildings, with large quantities of merchandize, furniture, and tools, the value of which amounted to £71,112 7s. 3d. and 220 families were turned upon their neighbours for shelter. The circumstances of the town had, before this, been a just subject for legislative assistance, from a great inequality of the taxes owing to the long continuance of the rule of valuation then in use, by which Boston was set at £170 in the thousand. Such had been the increase of the settlements and population of the Province in about nine years since this rule had been established, that trading towns had arisen to share the profits of commerce with the capital, in places where forests then stood; and in some instances the number of the polls in new townships was so great, as to pay their whole proportion of the tax to the exemption of the estates. Partial relief only having been given to the town under this grievance, its claim upon the General Court in the present calamity became irresistible. A brief was granted to collect money by
voluntary

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voluntary contribution throughout the Province; and for the immediate relief of the poor, £3000 was allowed out of the excise, £1100 was also remitted to the inhabitants by way of abatement of their taxes; a loan to the town of £3500 was continued, and at the next session, a petition to the King in its behalf was agreed on, and committed to the patronage of the Governor. The Assembly of New-York passed an act for granting the sufferers £2500, which was carried into effect, and the government of Pennsylvania gave £1500 for the same charitable purpose. In short the donations from one quarter and another amounted to the sum of £17,756 15s. 8d. Benevolence was followed by justice, and the next year the town was reduced in the apportionment of taxes to £112 in the thousand.

Journals.
Petition of
the town.
Selectmen's
Records.

As Governor Pownall arrived in the Province at the most gloomy state of the war, so he had the good fortune, before his departure from it, to find the success of the British arms established, and the fruits of victory in some measure realized.

The eastern Indians, who are the mere dependants upon the fortunes of the great contending

contending powers, began to surrender, as the arms of the French declined. Among these the Penobscots, who were situated within the bounds of Massachusetts, experienced the final decline of their powers as a warlike tribe. The increasing spirit of national hostility, or some other cause had rendered hopeless all prospect of satisfaction for the slaughter of their countrymen in the year 1755, Capt. Cargill having been tried for murder and found not guilty, and about the same time received with another person £600 from the public treasury for killing two other Indians in Penobscot Bay. The effects of war upon their population had been so great as to reduce them to five sachems and seventy-three warriors; and they now felt an irresistible check upon them by the erection of the fort at the mouth of their river. Under these depressed circumstances they sent deputies to settle a peace at Boston. The terms were such as their condition invited. Acknowledging themselves to be subjects of the King of Great-Britain, they confessed their rebellion, and the forfeiture of their lands in consequence of it. They received as a favour the privilege of hunting upon them, and otherwise

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Sup. Court's
Records.
June Term
1755, at
York.

April 9.

otherwise using such parts as should be assigned for that purpose. They promised to dwell near Fort Pownall. They relinquished all alliance with the French, and engaged to deliver up future offenders to be tried by the laws of the Province.

Governor Pownall being appointed to the command of South-Carolina, with a more advantageous salary, he prepared to return to England with permission, previously to his entering upon the duties of his new commission. His administration had been short, but extremely successful. He saw the prevailing feelings and habits of the people, and realizing that his future advancement might depend much upon the reputation which he might acquire in Massachusetts, he accommodated his measures to them with such address, that he was even exempted from exceptions to appearances in his personal conduct, which would have been highly censurable, according to the strict notions of the times, in a less favourite character. The savings of the public money, which he made by his exertions, rendered him justly popular in a Province, where the want of affluence could be supplied

plied only by industry. He effected this by the greatest attention to the dispatch of public business, which shortened the sessions of the General Court, and of course reduced the drafts on the treasury for the pay of the members. He lessened the advances of the Province by uniting with them the allowance of the crown for milage money to the foldiers; and his manner of building the fort at Penobscot was a master-piece of political economy. He associated with an easy condescension, amongst those leaders in the capital, who generally directed the voice of the multitude, whilst he indulged his natural gaiety in the politer circles of fashion and pleasure. The importance of his connexions, and his supposed influence in England, had great weight with those, to whom the public affairs of the Province were particularly intrusted; and indeed in his future parliamentary conduct he shewed himself not unmindful of this respect. The concerns of the war kept nearly out of sight the great controversial points respecting rights and prerogative, on which the General Court and former Governors usually divided; and when they came up, as once happened in the case of stationing troops on the

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1760 the frontiers, he yielded to a spirit which it had cost so much to subdue on similar occasions, and which he was not ill adapted to manage by apparent concessions. It was the height of his good fortune that the British arms prevailed beyond all rational calculation, which cast a lustre on his exertions in the military department, and gave an exultation to the people, that naturally elevated their immediate rulers in their view. The extent of his influence with the members of the Legislature is evidenced by their respectful addresses and by a compliment which the majority of the House paid him by offering him a passage to England in the provincial frigate, which they had assigned for bringing over the reimbursement money granted by Parliament, although it was the only vessel of force that was left to protect the trade. This proposal however, was shewn in a remonstrance of the merchants to the Council, to be so hostile to commerce, and so extravagant as it respected the freight of the public money, that the project was given up, by the Governor's declining the offer and taking passage in a private ship. When he embarked, both Houses attended him in a body to his barge, and every ceremony

mony was adopted which could leave a favourable impresson on his mind.

To those who are curious in tracing the parliamentary history of the Province, and the manner in which the constitutional rights of the several branches of the Legislature were settled under the charter, it may not be displeasing to sketch a controversy respecting the mode of passing the Treasurer's accounts, which terminated at this period. These accounts, having been laid before the House, were referred to a committee of their own : upon a report being made, the House voted to accept it, and that the accounts be allowed. The Council, agreeing to allow the accounts, concurred in the vote with an amendment, which was to expunge the acceptance of the report of the committee, they not having had any concern in the commitment, nor any privy with a committee of the House. In this the House unanimously non-concurred ; and thus, under the appearance of mere form, the two branches of the General Court were at issue upon their respective rights, as will be more fully shewn in the recital

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 recital of their arguments. The Council declared that they had nothing in view but to preserve order and their known established rights : that if an order of the whole Legislature were necessary for the Treasurer's discharge, and a due settlement of his accounts, and the Council were to be considered as one branch of the Legislature, they chose to see with their own eyes, and not with the eyes of a committee of the House : that the practice had been both ways through inadvertency ; and if the House thought that they had a right alone to discharge the Treasurer, there was no propriety in sending the accounts to the Board.

To this the House replied, that their proceedings were agreeable to usage, a few instances of inadvertency excepted : that true it was that the order of the whole Court was necessary for the Treasurer's discharge, but the late practice of the Board of a special examination of the Treasurer's accounts was novel, *and not within the rights belonging to them either as the King's Council or as one branch of the Legislature* : that the House challenged as their special rights and privileges the sole modelling of all laws, for
 imposing

imposing taxes on the people for the defence 1763
and support of government ; and had power
also to inquire into and judge of the uses
and occasions, for which monies were de-
manded and given and to appropriate the
same, and to inquire into the applications,
and censure the misapplications thereof ;
and that by the British constitution those
powers and privileges were hereditary to
the Representatives of the people : and they
apprehended that the Board had no right
in those cases to amend the doings of the
House, but absolutely to assent to, or dissent
from them : that the Board could not but
be sensible that in all bills for levying mo-
ney, the House had challenged and preserv-
ed their right of the sole modelling of the
same ; and that there was the same reason
that they should have the like power of in-
quiring into applications of the monies rais-
ed upon the people : that the House knew
of no other proper method of their making
such an inquiry but by a committee of their
own, and consequently no proper method
of their passing the Treasurer's accounts, but
by an acceptance of the report of such a
committee, and passing a resolve thereon.

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The Council rejoined that the House mistook their intentions. Their exception related merely to the form of the vote ; and therefore the answer of the House urging their right to originate and frame all laws for imposing taxes, to judge of the uses for which all monies were granted, and to appropriate all such monies as they think fit, were entirely out of the question : that the Board had no right to amend the votes of the House in the cases mentioned, was neither acceded nor denied, as there was no occasion to determine it, it being irrelative to the case in dispute : that the application of the public money was made by the Governor with the advice and consent of the Council : that the House would not send a vote respecting an inquiry into such application to the Board for their concurrence : that the examination into the Treasurer's accounts, and an inquiry how far he had discharged himself was quite a distinct thing from the other inquiry. In order to determine this, the House allowed a vote of the whole Legislature to be necessary ; and indeed there was no more pretence for the House to assume an exclusive right of examining the accounts of the Province Treasurer,

urer, than the account of the Province Agent, or of any committee, or of any person or persons whatsoever employed by the government in any public trust: that perhaps the right of the House to any share in passing upon the Treasurer's accounts was derived entirely from the act of the Province made in the 8th year of King William, which provided that such accounts should be laid before the General Assembly, for their examination, approbation, and allowance, but gave no precedence to the House of Representatives more than to any other branch of the Assembly: that there was nothing in the nature of these accounts to distinguish them from all other accounts, which were passed on by the Governor with the advice and consent of the Council: that precedents were both ways, but were not of much consequence in this case; they ought to be reduced to reason and propriety of proceeding, and not the reverse: that in order to concur or non-concur (a right which the House admitted) it was necessary to acquire knowledge by their own examination: that if they were to do this by a committee of the House, they might be considered as mere machines of the House, which they
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did not intend to submit to : that they were extremely anxious to act in concert with the House ; but if nothing better could be done, they should be under the necessity of framing a vote separate, determining how far the accounts ought to be approved and allowed, and to let it avail as far as it could.

The merits of this dispute were finally determined to lie with the Council, the House passing the Treasurer's accounts by a vote without reference to the report of their committee, and the Council concurring. This issue however was not obtained until the delay was made an exception, and threatened to affect the pecuniary concerns of the Province in England.

Lieutenant-Governor Hutchinson was now left in the command of the Province for a short time, during which the important measures for raising the army were continued with the usual assiduity, the prudential concerns of the Province were carefully arranged and methodized, and a conciliatory disposition prevailed amongst the several branches of the government.

From instructions to Mr. Bollan, now again after much opposition, elected to the
agency

agency of the Province, it appears that many particular affairs in England still remained unsatisfied. These arose from the expense of the troops detained at Louisbourg and Nova-Scotia, which was occasioned by the capture of Quebec ; the support of the French neutrals ; the services of the sailors employed in the River St. Lawrence on board the fleet ; the cannon taken from Castle-William to Crown-Point, and the demands against New-Hampshire for the support of Fort Dummer and Number Four, and defending its frontier. Beside which the Agent was directed to endeavour to procure a more favourable rule for apportioning the parliamentary grant, to effect the establishment of the boundary line of New-York, and the restoration of the revolted towns received by Connecticut.

In order to account for the solicitude of the General Court on the subject of the rule for apportioning the grants of Parliament, as well as to shew the nature of the connexion among the British Colonies, and the ground perhaps of the opinion which prevailed in subsequent years, of the impossibility of their effectual union, it will be useful to give the reasoning of Mr. Bollan upon the case. He
contended

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contended that the apportioning of the £200,000 granted this year, by the numbers of men raised in the several Colonies and marched into the field was unjust upon the following principles. Virginia voted 2000 men and mustered 1868. Massachusetts voted 7000 men and mustered 6500. The expense of the Colonies according to the best of his judgment was about £350,000; wherefore the sum to be granted being equal to $\frac{4}{7}$ ths of the expense, if the rule proposed for distribution be followed, Virginia would bear only $\frac{3}{7}$ th parts of the expense of 1868 men, whilst Massachusetts would bear $\frac{3}{7}$ th parts of the expense of 7000. And thus Massachusetts, whose expense duly proved according to former rules amounts to £110,000 sterling, in consequence of its raising the greater number of men for the public service, will be left to bear the expense of about £47,000, whilst Virginia would be left to bear the expense of about £13,000, supposing their expenses to be the same man for man. If these Colonies were equal in all other respects, this rule would be repugnant to the grant and act of Parliament: but Virginia really contained a greater number of inhabitants than Massachusetts, and was a more wealthy Colony.

C H A P. IV.

Governor Bernard arrives—System of colonial administration adopted by the British ministers—Parties in the Province—Controversy respecting the officers of the customs—Disputes on the subject of writs of assistance—and on making gold a tender. 1760

THE government of Francis Bernard in Massachusetts Bay stands amongst the most interesting periods of American history. It was contrasted with that of his predecessor, as much by the prosperous state of public affairs at its commencement, as by the distracted and unhappy condition of the people at its termination. It was the confine of a new order of things. Since the year 1754, and indeed since the last peace, a common object of apprehension and attack had combined the British empire with its various dependencies. The enemy was now subdued in Canada, and with them that deadly foe, who had infested the borders of the Colonies from that quarter with murder and pillage since their original settlement.

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tlement. This was supposed to operate like a new charter of civil and religious privileges to the people; and to withdraw with danger and the war that restraint upon their pretensions, which these had hitherto effected. Thus after the victory so long, so hardly fought, had been obtained, reflection stepped in to poison success, and to distract all the preconceived enjoyments and advantages of conquest. What, it was suggested, is to prevent the loss of all which we have contended to preserve, and which we have added to our dominions, by the overruling spirit of independence? When the enemy, which we have vanquished, hung over the borders of our Colonies, they naturally flew to us for protection. Their religion, affections, and interests threw them into our arms, and secured them in our power. But the removal of danger changes the tone of their feelings, and must undermine their relations towards us. The natural progress of nations to political manhood is regulated not merely by time, but by various adventitious circumstances, and, in this view, we have hastened their maturity many centuries.

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Since the event, which has so fully justified these apprehensions, it seems as if arguments were wanting to oppose them. Perhaps they were allayed at the time by the example and policy of Spain towards South-America, which was cited. The charm, it was said, by which a nation was to govern its Colonies, consisted in not allowing them to keep up a military or a marine force. British Governors, civil officers, garrisons, and ships of war, were to be relied upon to secure a country, which, it was supposed, would not be *peopled* for many centuries. This security would also be strengthened by hereditary rivalries and animosities amongst the several settlements, which would effectually prevent their uniting against the parent country. Finally, when this plan of government should be exhausted in its operation, the interest of Great-Britain consisted rather in the independence of her Colonies, than in their union with France by conquest, which, in the course of events, might happen, if French subjects continued in their neighbourhood. In the first case the natural trade of Britain with them would continue to mutual benefit; in the last, so great a force would be added to the power
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1760 of her rival, as might enable France to realize the plan of her insatiable ambition founded on universal empire.

Such being the apprehensions and predictions of the parent country, we shall find the system of colonial administration regulated by them, and the conduct of all the officers exhibiting their influence. We are not therefore to look only at the particular characters of these for the explanation of future affairs. Events might be accelerated or retarded by the personal wishes and feelings of individual agents ; but the cause of the great convulsion, which ensued, was founded in the inflexible system, which ministers imposed on the throne.

August 4.

Governor Bernard, on his first appearance in the Province seemed not to lie under any unfavourable impression in the view of the people. He had governed the Province of New-Jersey so acceptably, as to make his advancement to Massachusetts to be esteemed a just reward for his services. In his introductory address to the General Court, he spoke of his obligations not only to preserve the rights of the people as British subjects, but

August 13.

but their particular privileges granted to them by the royal charters. The successful state of public affairs gave him an opportunity of remarking upon the peculiar happiness of the times, when all parties were united, and even the voice of faction was silenced ; when the sovereign was acknowledged to be the maintainer of the privileges of his subjects, and the people were become the supporters of the prerogatives of the crown. The House, in their answer, joined in extolling the happiness of the times, and in connexion with the wisdom and power of the sovereign, failed not to applaud the British constitution, so long allowed to exceed all others, and now exceeding itself.

The times were indeed signalized with fortunate events. On the first of September information was received that the French army, who had besieged General Murray in Quebec, and threatened to reverse the victory of Wolfe, was obliged to retire from that city ; and soon afterwards arrived the account of Montreal and the rest of Canada surrendering to General Amherst on the eighth of that month. The exultation at these events was but little checked by the
loss

1761.

loss of Fort Loudoun ; and the death of the King, which threw a shade of melancholy on the close of the year, was soon effaced by the promising character of the English-born successor to the crown.

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Whatever might have been the opinions or views of Governor Bernard upon coming to the chair, affairs were approaching to that crisis, which placed him on unequivocal ground. There had long existed in the Province a division between the advocates for the crown and the defenders of popular rights. Shirley, as has been mentioned, balanced these parties with good fortune. Pownall, partly perhaps from his love of liberty, and partly from the necessity of managing the war with success, which could be done only by standing well with the General Court, was cautious in his connexions with the friends of the prerogative, and rather courted the leaders of his opponents. One of these reasons may not have existed so strongly in the breast of Governor Bernard ; and the other was lessening in its operation from the eventual success of the war. He was therefore classed on the side of those who were for strengthening the royal

Liberty and
Prerogative

Shirley
Pownall

Bernard

royal authority in America, and for adopt-¹⁷⁶¹
 ing the various plans of revenue and pre-^{Revenue}
 rogative which were so seriously attempted
 in future years. This party naturally con-
 sisted of all those officers, who were appoint-
 ed by and dependant upon the King, and
 many expectants who grew out of the prom-
 ising system of raising a tax to be ex-
 pended in America. Lieutenant-Governor
 Hutchinson was at their head both in rank
 and importance; and by means of the death^{Death of}
 of Stephen Sewall, Esq. the Chief Justice^{Sewall}
 of the Province was now raised to that im-
 portant office, which enabled him to com-
 mence with greater advantage that agency
 in the public affairs of these times, and the
 future revolution of the country, which was
 so conspicuous, influential, and finally un-
 fortunate.*

The

* His commission as Lieutenant-Governor was pub-
 lished on the first day of June, 1758, and was the last in
 the Province that was renewed after the demise of the
 crown, owing, as he seems to have supposed, to the mis-
 representations of his character made by his enemies to
 the Earl of Halifax. (M. S. letter-book.) These he found
 means effectually to obviate, and to unite more offices
 than were ever filled by one person before: holding the
 places of Lieutenant-Governor, a Counsellor, Chief Justice
 of the Superiour Court ^{St m m} and Judge of Probate for the County
 of Suffolk at the same time.

The subject devoted to commence the disputes between Governor Bernard and the General Court sprung out of this division. A rooted aversion subsisted between the officers of the customs in the port of Boston, and the people concerned in the foreign trade of the Province. The duty of those officers was odious in itself; and a zeal to merit the approbation of the ministry, and to accumulate wealth, induced them to exercise a rigour in enforcing the commercial laws, which added much to the hatred necessarily connected with their business. The antipathy became personal; and the execution of the laws appeared like the triumph of private revenge. Loud and frequent complaints arose, that a severity was used to carry into effect grievous regulations of trade, which in other Colonies were suffered to be evaded from a conviction of their unreasonableness, and the impracticability of their being generally enforced. The abuses in the department of the revenue, and the notoriety of the fact, that after all the oppression used in the collecting of it, none of the avails reached the exchequer, naturally led the merchants to scrutinize the proceedings of the commissioners. It appeared

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 peared that in cafes, where one third of the forfeiture accrued to the Province, large fums had been allowed out of it to private informers, and exorbitant fees taxed for attornies and other ufes, contrary to a law of the Province of *the prefent year*, ftating the fees of the Custom-Houfe officers. This abufe was represented to the General Court by a memorial from a number of refpectable merchants, who were heard by their council, and a committee having reported that in fix cafes of trial in the Court of Vice-Admiralty, the Province was illegally and unjuftly kept out of £475 9s. 11d. in the manner above-mentioned, and that the Treafurer fhould be empowered to demand, (and if unpaid for one month) to fue for this money in a courfe of law, their report was accepted by a general vote of both Houfes.

This threw the Custom-Houfe officers upon the Governor, whose negative to the refolution was the firft ftage of their defence. He objected to it upon the ground, that the forfeitures were a part of his Majefty's revenue granted to him by act of Parliament, and muft therefore be fued for according to law.

law. By this it was the duty of the Treasurer to receive and issue the King's money; and of the Attorney-General to sue for and recover it. That as the resolution, standing as it did, would amount to altering an act of Parliament, it would, if passed, have no other effect than his incurring the King's displeasure for mismanaging the revenue contrary to law, against his positive orders. He therefore desired them to reconsider the resolution, and if they would remove this difficulty, he would give his assent to it.

The House appear to have understood, that delivering the prosecution into the hands of the Attorney-General was either consigning it to oblivion, or confirming by a judicial decision all the abuses which had been practised. They therefore replied, that they were far from apprehending that a resolution of the General Court could alter an act of Parliament: that every act of the Court was voidable, because it might be disallowed by his Majesty; and every act repugnant to an act of Parliament, extending to the plantations, was, *ipso facto*, null and void; nor was it in their hearts to desire the Governor to make the least infrac-
tion

tion upon the King's prerogative, relative to his Majesty's revenue, nor to govern contrary to his orders, against law : that all they were solicitous for was to recover the money (to use the Governor's own words) *due to the treasury of this Province*, upon account of the seizures made pursuant to the act of 5th of George II. which his Excellency apprehended might be sued for by the Attorney-General only : that the money was the Province's, and not in any sense the King's, when the Parliament had granted it to the Province, unless its being granted to his Majesty for the use of the Province makes it a grant to his Majesty's use. But the grants of money made by the General Assembly were always to his Majesty for the use of the Province, in the same manner as the grant made by the aforementioned act of Parliament of one third of the goods seized and forfeited was for the support of this government ; and if all the revenue of the Province must be sued for by the King's Attorney, and through his hands (if ever) paid unto the Receiver-General of the Province, it might make his office very lucrative to him, but most dangerous to the government, and grievous to the subject. The
Receiver-

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Receiver-General only had heretofore done it, and by virtue of an act of the Assembly to which there never was any objection made by the Governor or the King: that they should be extremely grieved to go out of this old way, and try one which was never gone into before, and from which it was easy to foresee that many and great inconveniencies and mischiefs would arise to the Province. For if the Attorney-General, who was not chosen by the people, should be wicked enough to keep, or lavish enough to spend, the money thus received for the Province, what method could be devised to get it from him, since upon the Governor's argument, no one could sue him but himself. Cases might happen, where (differing in sentiment from other gentlemen in the profession, and from the General Assembly) he might be obliged to bring an action against his own opinion, which would be hard upon him and unsafe for the Province: that none of these objections lay against the Treasurer, who was annually chosen by the people, and was under bonds for his fidelity: that it would be surprising that this money being the Province's, the Province could not maintain an action and employ whom they

they thought best, since in all popular statutes, where a forfeiture was to the King and the informer, the latter, unless positively restricted by the act, might prosecute in the common law courts and in the Court of Admiralty, as well for himself as the King, and the informer chooses what attorney he pleases to manage the suit : that, on the whole, they could not reconsider the resolution, and hoped that they had removed the Governor's difficulties, so as that he could assent to it.

The Governor however said, that he did not feel his doubts satisfied, insisting in his reply, that although the money was to be applied to the use of the Province, yet, until it was received, it was due to the King : that by the common law of England, the King could sue and be sued no otherwise than by the Attorney-General : that the statute in question being an act of Parliament, must be executed according to that law, and to appoint a different method of executing it was to alter the act, which they could not control, as they might an act of the Province : that the Treasurer had no power to sue, except what arose from the words

words of the act under which he sued ; and no such power was given by this act : that it was not his intention that the Attorney-General should *receive* the public money, but that he should *sue for it*, as in England, and that the Treasurer should receive the amount of the judgment. As to bringing an action against his own opinion, in such case the Attorney-General must support it by the best arguments he could : that it was his desire that the action should be brought, as they ought to be satisfied respecting it, their only difference was about the mode. Therefore to end the disquisition, as they seemed so very desirous that their method should be pursued, and his consent could not prejudice the King's rights otherwise than by precedent, against which he had sufficiently guarded by his messages ; and the act by their own concession must have its effect, and the Council having advised him to wave his opinion, he consented to the resolution, hoping that they would not require of him such another proof of his great desire of preserving a good understanding with them.

The acquiescence of the Governor in this resolution was probably induced from the security,

security, which the Custom-House officers felt in the opinion of the judicial department on such a point of law, as they intended to raise in this case. An action was brought by the Treasurer in pursuance of the resolution of the General Court, and a plea in abatement made by Mr. Paxton, the defendant. This was overruled in the Inferiour Court, and a judgment given in a verdict against him; but on the appeal, the Superiour Court sustained his plea and he recovered judgment against the Treasurer, not without a conviction in the minds of the Judges of the injury done the Province, but from the want of authority to call in question the jurisdiction of the Admiralty. The result of this case must have tended greatly to increase the animosity which existed between the contending parties in the Province. And about the same time and from the same principles and feelings, arose another important dispute upon the subject of writs of assistance. One of the Custom-House officers petitioned the Superiour Court of Judicature, stating that as they could not fully exercise their offices in such a manner as his Majesty's service, and the laws in such case require, that Court would grant

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Hutchin-
son's M. S.
Let. Book.

grant writs of assistance, to aid them in the execution of their duty, according to the usage of the Court of Exchequer in Great-Britain. Mr. Gridley, as King's Attorney, maintained the legality of this writ, as well on the practice of the Exchequer, as on that of the Superiour Court of the Province. The practice in England was supported by statutes of 12th and 14th Charles II. and by 6th Anne, which continues all processes and writs after the demise of the crown, and writs of assistance amongst the rest. The authority of the Superiour Court to grant this writ was founded on the statute of 7th and 8th of William III. which enacted that all the officers for collecting and managing his Majesty's revenue, and inspecting the plantation trade in any of the plantations, should have the same powers, &c. as are provided for the officers of the revenue in England ; also to enter houses or warehouses to search for and seize any such goods, and that the *like assistance* should be given to the said officers, as is the custom in England. This could be no otherwise done than by writ under the seal of that Court, since writs from the Court of Exchequer could not run here : and by a law
of

of the Province, this Court was appointed with cognizance of all pleas, &c. as fully as the Court of King's Bench, Common Pleas, and Exchequer in England. "It is true," said Mr. Gridley, "the common privileges of Englishmen are taken away in this case, but even their privileges are not such in cases of crime and fine. It is the necessity of the case, and the benefit of the revenue that justifies this writ. Is not the revenue the sole support of fleets and armies abroad, and ministers at home, without which the nation could neither be preserved from the invasions of her foes, nor the tumults of her own subjects? Is not this, I say, infinitely more important than the imprisonment of thieves or even murderers? Yet in these cases, it is agreed, that houses may be broke open. In fine, the power now under consideration is the same with that given by the law of this Province to treasurers towards collectors, and to them towards the subject. A collector may, when he pleases, distrain my goods and chattels, and in want of them, arrest my person, and throw me instantly into gaol. What! shall my property

ad William
III. Chap. iii.

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erty be wrested from me? Shall my liberty be destroyed by a collector for a debt unadjudged, without the common indulgence and lenity of the law? So it is established; and the necessity of having public taxes effectually and speedily collected is of infinitely greater moment to the whole, than the liberty of any individual."

charge

Mr. Thacher, an eminent lawyer, being ordered by the Court to search for precedents, reported that he found no such writ in the ancient books: that the most material question was, whether the practice of the Exchequer was good ground for this Court. But this Court had, upon a solemn argument which lasted a whole day, renounced the chance of jurisdiction, which the Exchequer had in cases where either party was the King's debtor. In England all informations of uncustomed or prohibited goods were in the Exchequer; so that the Custom-House officers, were the officers of that court, under the eye and discretion of the Barons, and so accountable for any wanton exercise of power. The writ now prayed for was not returnable. If the seizures were so before their Honours, and this Court should inquire

inquire into them, they would often find a wanton exercise of power. In England they seized at their peril, even with probable cause.

Mr. Otis appeared for the inhabitants of Boston, who had presented a counter-petition. As his plea discloses several curious facts, presents a striking picture of the spirit of the times, and in some measure portrays the manner of that ardent patriot and well-read lawyer, we shall insert more at large such minutes as we possess; lamenting that we cannot recover at this day many elegant rhetorical touches and weighty arguments, which were unavoidably omitted.

May it please your Honours,

I was desired by one of the Court to look into the books, and consider the question now before them concerning writs of assistance. I have accordingly considered it, and now appear not only in obedience to your order, but likewise in behalf of the inhabitants of this town, who have presented another petition, and out of regard to the liberties of the subject. And I take this opportunity to declare, that whether under a fee or not (for in such a cause as this I despise a fee)

I will

1761
I will to my dying day oppose with all the powers and faculties God has given me, all such instruments of slavery on the one hand, and villany on the other, as this writ of assistance is.

It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book. I must therefore beg your Honours' patience and attention to the whole range of an argument, that may perhaps appear uncommon in many things, as well as to points of learning that are more remote and unusual; that the whole tendency of my design may the more easily be perceived, the conclusions better descend, and the force of them be better felt. I shall not think much of my pains in this cause, as I engaged in it from principle. I was solicited to argue this cause as Advocate-General; and because I would not, I have been charged with desertion from my office. To this charge I can give a very sufficient answer. I renounced that office, and I argue this cause from the same principle; and I argue it with the greater pleasure, as it is in favour of British

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ish liberty, at a time when we hear the greatest monarch upon earth declaring from his throne that he glories in the name of Briton, and that the privileges of his people are dearer to him than the most valuable prerogatives of his crown : and as it is in opposition to a kind of power, the exercise of which, in former periods of English history, cost one King of England his head, and another his throne. I have taken more pains in this cause, than I ever will take again, although my engaging in this and another popular cause has raised much resentment. But I think I can sincerely declare, that I cheerfully submit myself to every odious name for conscience' sake ; and from my soul I despise all those, whose guilt, malice, or folly has made them my foes. Let the consequences be what they will, I am determined to proceed. The only principles of public conduct, that are worthy of a gentleman or a man, are to sacrifice estate, ease, health, and applause, and even life, to the sacred calls of his country. These manly sentiments, in private life, make the good citizen ; in public life, the patriot and the hero. I do not say, that when brought to the test, I shall be invincible. I pray God I may never be brought

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brought to the melancholy trial : but if ever I should, it will be then known how far I can reduce to practice principles, which I know to be founded in truth. In the mean time I will proceed to the subject of this writ.

In the first place, may it please your Honours, I will admit that writs of one kind may be legal ; that is, special writs, directed to special officers, and to search certain houses, &c. specially set forth in the writ, may be granted by the Court of Exchequer at home, upon oath made before the Lord Treasurer by the person who asks it, that he suspects such goods to be concealed in those very places he desires to search. The act of 14th Charles II. which Mr. Gridley mentions, proves this. And in this light the writ appears like a warrant from a Justice of the Peace to search for stolen goods. Your Honours will find in the old books concerning the office of a Justice of the Peace, precedents of general warrants to search suspected houses. But in more modern books you will find only special warrants to search such and such houses specially named, in which the complainant has before sworn that

he

he suspects his goods are concealed ; and you will find it adjudged that special warrants only are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general, is illegal. It is a power, that places the liberty of every man in the hands of every petty officer. I say I admit that special writs of assistance, to search special places, may be granted to certain persons on oath ; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself, before I proceed to other acts of Parliament. In the first place, the writ is universal, being directed “ to all and singular Justices, Sheriffs, Constables, and all other officers and subjects ;” so that, in short, it is directed to every subject in ~~the~~ the King’s dominions. Every one with this writ may be a tyrant : if this commission be legal, a tyrant in a legal manner also may control, imprison, or murder any one within the realm. In the next place, it is perpetual : there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him, until the trump of the arch-angel shall excite
different

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 different emotions in his soul. In the third place, a person with this writ, in the day time, may enter all houses, shops, &c. at will, and command all to assist him. Fourthly, by this writ not only deputies, &c. but even their menial servants are allowed to lord it over us. What is this but to have the curse of Canaan with a witness on us; to be the servant of servants, the most despicable of God's creation? Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-House officers may enter our houses, when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and every thing in their way: and whether they break through malice or revenge, no man, no court, can inquire. Bare suspicion without oath is sufficient. This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and when Mr. Ware succeeded him, he endorsed this writ over to Mr.

Mr. Ware : so that these writs are negotiable from one officer to another ; and so your Honours have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this : Mr. Justice Wally had called this same Mr. Ware before him by a constable to answer for a breach of sabbath-day acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied, Yes. Well then, said Mr. Ware, I will shew you a little of my power. I command you to permit me to search your house for uncustomed goods ; and went on to search his house from the garret to the cellar ; and then served the constable in the same manner. But to shew another absurdity in this writ, if it should be established, I insist upon it every person by the 14th Charles II. has this power as well as Custom-House officers. The words are, " it shall be lawful for any person or persons authorized," &c. What a scene does this open ! Every man prompted by revenge, ill humour, or wantonness to inspect the inside of his neighbour's house, may get a writ of assistance. Others will ask it from self-defence ;

self-defence ; one arbitrary exertion will provoke another, until society be involved in tumult and in blood.

Again, these writs are not returned. Writs in their nature are temporary things. When the purposes for which they are issued are answered, they exist no more, but these live forever : no one can be called to account. Thus reason and the constitution are both against this writ. Let us see what authority there is for it. Not more than one instance can be found of it in all our law-books ; and that was in the zenith of arbitrary power, viz. in the reign of Charles II. when star-chamber powers were pushed to extremity by some ignorant clerk of the Exchequer. But had this writ been in any book whatever, it would have been illegal. All precedents are under the control of the principles of law. Lord Talbot says it is better to observe these than any precedents, though in the house of lords, the last resort of the subject. No acts of Parliament can establish such a writ : though it should be made in the very words of the petition, it would be void. An act against the constitution is void. (vid. Viner.) But these
prove

1701
 prove no more than what I before observed, that special writs may be granted *on oath and probable suspicion*. The act of 7th and 8th of William III. that the officers of the plantations shall have the same powers, &c. is confined to this sense, that an officer should shew probable ground, should take his oath of it, should do this before a magistrate, and that such magistrate, if he think proper, should issue a special warrant to a constable to search the places. That of 6th Anne can prove no more."

M. S. minutes taken at the bar.

Notwithstanding these and many more arguments were enforced with a zeal peculiar to the spirit of the occasion and the manner of the pleaders, the writ of assistance was granted.

Supr. Court Records.

These disputes disturbed the public mind so much, that the Governor in his speech to the General Court in the month of June cautioned them against giving attention to declamations, tending to promote a suspicion of the civil rights of the people being in danger, which suited well in the reigns of Charles and James, but in the time of the Georges were groundless and unjust. In the reply

reply of both Houses it was observed, that they regretted his Excellency's apprehensions that a spirit of party was prevalent among them, if so, they were utterly ignorant of it; and they could assure him that there was nothing of such a spirit in the legislative part of the community: and should it appear, that they should discourage it to the utmost of their power. That his Excellency's recommendation, to give no attention to declamations tending to promote a suspicion of the civil rights of the people being in danger, should have its weight. That it was their intention to see for themselves; and it gave them pleasure to see that the civil rights of the people were not in danger; nor were they in the least degree suspicious that they ever would be under his Excellency's administration.

Notwithstanding the agitations which had taken place amongst parties in the capital, the alarm had not as yet extended to the country at large, nor drawn into view those essential points of controversy, on which the revolution of the Colonies depended. Several internal circumstances were favourable. The reimbursement money for the year 1759, amounting

amounting to £60,634 sterling, had chiefly arrived. The requisition for men was reduced to 3000; and in the fall of the year Sir Jeffry Amherst discharged these, excepting 268 at Halifax and 323 at Crown Point, who were draughted for service during the winter. Upon the whole, the Province seems as yet to have been in that state of rest and satisfaction, which a deliverance from an hostile neighbour, and a reliance on the faith of Parliament for relieving it from the debt incurred by the war, naturally inspired. And it must astonish the political observer, that at such a moment, when the genius of the British nation may be said to have appeared and pointed to the most fatal convulsion in her history, no notice was taken of the warning. Her ministers, either distracted with the weight of the public debt, overlooked every thing but the immediate means of collecting a revenue; or, ignorant of the growth, enterprise, and advantages of the Colonists, carelessly suffered a disagreement amongst these distant subjects, which was worthy of the interposition of the highest authority, to be aggravated by the rancour and prejudice of private neighbourhood, and finally to be kindled into a flame by the contemptible

temptible spirit of party, which the interests of individuals and the domineering pride of inferiour officers engendered.

In the fall of the year a General Assembly was called in consequence of discovering that the Treasurer's notes and dollars were counterfeited, for the punishment of which offence the Governor considered the common law as very inadequate, and that there was a great defect also in its not providing a punishment for the counterfeiting of bills of exchange and notes of hand. He therefore recommended the calling in of the Treasurer's notes, and issuing others with proper checks; and that the acts of Parliament against the forging of public and private securities should be extended to the Province.

The state of the coin in Massachusetts was peculiarly circumstanced at this time. The comparative value of gold and silver in England was such, that silver could be shipped thither from this Province with much greater profit than gold. Exchange with that country for many years past had been in favour of this, but now it was reversed. The merchants,

merchants, having become much indebted in England, were obliged to seek for large remittances in the most advantageous way, and the causes which have been mentioned, led them to export the silver coin. The consequences of such an exportation became very serious, from the scarcity of current money which it occasioned; and, as gold was not by law a tender, it became particularly interesting to debtors; for if silver could not be procured, gold must be received in payment of demands, at such rates as creditors would assent to. These two classes of men therefore became immediate parties to the controversy which took place; they drew after them political disputants; and when the General Court assembled, the members seemed to represent their constituents in nothing more exactly than in their divisions. The calling in of the Treasurer's notes, and issuing others as a mere defensive measure against counterfeiting, was a very simple and necessary precaution. This however was connected with the question in what coin they should be made payable; and this, of course, brought on the subject of making gold a tender. All was controversy and indecision. The two Houses,
differing

differing in principle on the main point, proposed bills to each other for all the purposes mentioned in the Governor's message; mutually non-concurred in them; exchanged amendments, and as often rejected those amendments; until the Governor interfered by consenting, that at present, his recommendation should be confined to the single business of calling in and re-emitting the Treasurer's notes, and suffering the rest to stand over. But all was ineffectual. The House of Representatives insisting on making gold a tender and the Council opposing it, the court could agree in nothing excepting to dispute; and after sixteen days spent in fruitless debates, the Governor was obliged to prorogue them with exhortations, that, as the prorogation would put a legal end to all the business then pending, it might have the same effect upon their minds and memories, and free them from all bias and prejudice arising from any transactions, which had defeated the intention of the session. The parties now appealed to the tribunal of public reason. And Lieutenant-Governor Hutchinson appearing in the newspapers in favour of reducing the value of the gold coin, as an expedient to lessen the
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the motive for retaining it in the Province, and by that means to diminish the exportation of silver, Mr. Otis became a champion in the same manner for the party, who either considered gold as a legal tender, or were for making it such at the usual rate.

The manner in which the subject was handled by these writers was highly contrasted. Mr. Hutchinson was temperate and perspicuous. Mr. Otis with depth of reasoning sought to captivate the public mind, and to excite all its prejudices against the personal character of his adversary. This occasioned a medley of argument and sarcasm, so pointed and warm, that Mr. Hutchinson thought the writer would lose his friends with his temper, and had justified neglect. Of this he availed himself and omitted to make a direct reply; but in order to give more force to this management, he proceeded to write on the subject without noticing his opponent: and to this circumstance we owe a curious history of the currency. An anonymous publication also appeared in this dispute, which was attributed to Mr. Bowdoin, then a member of the

See the Ev.
Post.

the Council, who was in sentiment with Mr. Hutchinson upon this subject, and who met with similar treatment. The popular voice inclined to Mr. Otis. The dispute was soon enlarged, attracting other objects within its sphere, until the plan of the prevailing party became definite and directed to important points; such as the expelling the Judges of the Superiour Court from the Council; the change of the agent in England; ameliorating the business of writs of assistance; as well as preserving the present rates of gold, and making it a tender: so that the winter session of the General Court promised in appearance greater conflicts than had happened in the last.

CHAP. V.

Bill for making gold a tender passed—Salaries of the Judges of the Superiour Court reduced—Mr. Bollan dismissed, and Jasper Mauduit, Esq. appointed Agent—Attempt to exclude the Judges of the Superior Court from a seat in the Legislature—Arguments on the subject—Military events—Debate between the Governor and House respecting the employment of the armed provincial sloop.

1762

THE General Assembly was called to the field of controversy early in the year of 1762; and after a slight struggle between the Council and House, victory upon the whole declared herself in favour of the Representatives. It is to be understood that the Governor had not entered zealously into the dispute about the currency, which was left very much to the management of Mr. Hutchinson; so that the approach of the Governor and the General Court to each other was the less difficult. The House passed a bill for issuing new notes, in lieu of those extant, from the Treasury, in payment

1762.

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ment for which gold coin at the usual current rate was made receivable ; and another bill expressly declaring the same coin to be a tender in all cases, to both of which the Council made little opposition, and the Governor gave his consent. The good disposition discovered at this session was mutual ; for in consideration of the extraordinary services of his Excellency, the General Court granted him the island of Mount-Desert. The House however accompanied their resolution with a message, entreating that he would use his best endeavours for obtaining the King's gracious confirmation of a title to lands (of which Mount-Desert was a part) between Nova-Scotia and the River Sagadahock. The majority having thus obtained an ascendancy in the points before mentioned, they attempted to retrieve the ground, which they had lost by the decision of the Superiour Court on the subject of writs of assistance. They prepared a bill, entitled, An act for the better enabling officers of his Majesty's customs to carry the acts of trade into execution ; the substance of which was to prevent the issuing of those writs to any person but a Custom-House officer ; and that upon special information on oath, naming

*Mount
Desert*

ming the informer, the person supposed to own the goods, and the place where they were suspected to be concealed. But here the Governor's complaisance was checked. He refused his assent to this bill as repugnant to the laws of England, particularly the 8th of William III. Chap. xxii. It were to be wished that truth did not require it to be added, that the salaries of the Judges of the Superiour Court, having been reduced the last year, were not only granted at the same rate this session, but the extra compensation to the Chief Justice was entirely withheld.

See page 88.

After a short prorogation, the same system was pursued with partial success. Mr. Bollan who had been the agent of the Province in England, was dismissed, and Jasper Mauduit, Esq. a gentleman of very different pursuits in life, and of much less knowledge in provincial affairs, was appointed in his stead. Richard Jackson, jun. Esq. Counsellor at law for Connecticut, was joined in case of the receipt of public monies. Mr. Bollan's interest had been much shaken by Governor Pownall, who had partially associated his brother John Pownall, Secretary

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tary to the board of trade, in the agency. A deduction from the reimbursement money remitted in the year 1759, and a remissness in his correspondence with the General Court had operated still more to diminish the public estimation of him. The inhabitants of Boston also, on the departure of Governor Pownall, had instructed their Representatives, upon the principle of relieving the people from the charge of wholly supporting an agent, and procuring the advantage of personal connexions, to endeavour to effect the election of some gentleman residing at or near the city of London. Mr. Mauduit came within this description; being the brother of Israel Mauduit, Esq. who had made himself of importance to ministers by his writings and other active measures in politics; and who was afterwards partially united in the agency. These causes, and perhaps we may add the circumstance of Mr. Bollan's being a member of the church of England, and Mr. Mauduit's being a Dissenter, placed the agent on that poise with the General Court, which, it was said, the influence of the Governor could turn either way. Affairs were now in such a state as made it inexpedient, perhaps impossible,

possible, to save him from opposition, and 1762
he was dismissed from the service of the
General Court, near the opening of a con-
test, in which his talents and legal informa-
tion were well calculated to be useful, and
to the aid of which he was some years after-
wards recalled in the capacity of agent for
the Council.

The next measure which was pursued en- *Bill*
gaged all the attention of the popular party,
being founded on constitutional principles,
and immediately connected with the over- *throw*
throw of their greatest adversary. This was
a bill for excluding the Justices of the Su-
perior Court from a seat in the Council or
House of Representatives. The grounds
of it were the incompatibility of the duties
required of persons filling these offices, and
the danger to the liberties of the subject
from uniting the judicial and legislative pow-
ers, and, as it respected the Lieutenant-Gov-
ernor, possibly the executive also, in the
same hands. At the present day the reason-
ableness and necessity of this measure is too
obvious to require explanation: yet not-
withstanding the general success of those
who advocated it, and the spirit with which
it

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it was brought forward, it was lost for this time in the House by a majority of seven. In the course of the arguments upon this subject on the present and future occasion, the direct and respected authority of Montesquieu, as well as the reason of the case on the general principles of government, were adduced in favour of the exclusion, and were enforced by a new writer with a precision, perspicuity, and coolness well calculated to improve the advantages which his side of the question afforded, and which derived additional weight from the low sarcasm and personal abuse that had become very frequent between the parties to this controversy. Attempts were made to avoid his arguments by an opponent of much ingenuity and logical acuteness in argument, of great legal information and overbearing wit. It was contended by him, that the sense of keeping the three powers of government distinct was that the *body* which exercises the *legislative power* should be composed of members, *a majority of whom* should have no share in the exercise of the *judiciary* power. This was keeping the several powers in distinct bodies of men, and satisfied the principle, without going so far as to say that no individual

vidual member should belong to both. So 1762.
 in England the Lords, who sit in Parliament,
 were not deprived of their seats or voices by
 being made Chancellors, or Judges of any
 other courts in England; nor was it uncom-
 mon for these to be made Peers of the realm,
 of which Lord Chief Justice Mansfield was
 an instance.

As to a Lieutenant-Governor's not being
 eligible as a Counsellor, because in case of
 the absence of the Commander in Chief the
 Lieutenant-Governor would fill his place;
 and then either the Province must lose one
 of its Counsellors, or the same gentleman
 must act as Governor and Counsellor, it
 ought to be premised: that it was a great
 mistake to assert that there could be no lib-
 erty, where he who exercises the executive
 power has *any share* in the legislative. The
 King of Great-Britain, who had the sole ex-
 ercise of the executive power, had also a
 share in the exercise of the legislative power,
 that is, the power of rejecting. Therefore
 Montesquieu, who, when he wrote, had the
 English government in view, must be un-
 derstood to mean *the whole executive and the*
whole

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whole legislative powers ought not to be united, as they are in the republics of Italy ; or, in other words, that a *majority* of the body, which exercises the legislative power, should have no share in the executive. So long as the Governor was resident in the Province, there could be no constitutional objection to the Lieutenant-Governor's being in the Council. As to the contingency of the Lieutenant-Governor's filling the place of the Commander in Chief, if it should happen, it could at most only reduce the number of Counsellors, considered in their legislative capacity, from 28 to 27 ; a case which frequently occurred without any apprehension of danger to political liberty ; and, as it might not happen, it was absurd to deprive the Province of an able Counsellor forever, lest it might be deprived of him for a short time ; and the constitutional objection of uniting the executive and legislative powers would be obviated by his declining to act as a Counsellor in matters of legislation : or, if he could be weak or wicked enough to attempt to enslave his country (a supposition hardly to be made for argument's sake) he was not to be feared, unless the King, Lords, and Commons of Great-

Great-Britain were supposed to be in combination with him. 1762

To this it was answered, that if a large majority of the Legislature ought to have no share in the judiciary power, for the same reason not a single man, who has a share in the judiciary power, should be a member of the legislative body. For if a single member, why not more? and liberty must be in danger, according to the maxim advanced, in proportion to the degree of influence which a single member of the one body might have in the other: and how great would be the influence of a Judge in the legislative body! As to Chancellors and Judges having seats in Parliament, the inference that it was constitutional, because it had sometimes been a fact, was inconclusive. The creating of Peers of the realm and electing Counsellors were distinct powers: the one was the act of the sovereign, the other the election of the people. A sovereign may exercise his legal prerogative, as he pleases; but would it follow, that because the sovereign is pleased to create a Lord Chief Justice a Peer of the realm, it is expedient for the people of this Province to make a Judge

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Judge a Counsellor? or that it is perfectly consistent with liberty? or that it is agreeable to Montesquieu's sentiments of liberty, after he has expressly said that there could be no liberty, if the power of judging be not separated from the legislative power?

That the instance of the King of Great-Britain's uniting the executive and legislative powers did not apply. As a legislator he had only the right of *rejecting*. Counsellors had the right of resolving; and the great writer, whose authority was relied upon, expressly says, that if a prince should have a share in legislation by the power of resolving, liberty would be at an end. That the three great powers should be kept in an even balance; a small weight over in either scale might indeed be more easily removed, but whilst it remained, it as effectually destroyed the balance as the largest. The *whole* executive power should be kept separate from the *whole* legislative power. If the Commander in Chief should be a Counsellor at the same time, the two powers being vested in the same person, though with respect to the legislative in part only, unavoidably, in a certain degree, there would
fall

fall in the scale of executive power too much weight of influence, and the balance would be disadjusted. Indeed it seemed to be allowed by the friends of the Lieutenant-Governor's cause, that this would be an unconstitutional union ; and therefore they say that, in such a case, a Lieutenant-Governor would not act as a Counsellor, considering the Council as a legislative body. But could the public be assured of this ? Power is enchanting ; and if a Lieutenant-Governor in the case supposed should choose to think it was not an unconstitutional union, and to act in both capacities, who could hinder him ?

Ev. Post.
Bost. Gaz.
Journals and
Records of
the General
Court.

The military events of this year although carried on without the continental Colonies are deserving of our notice. The attack upon the island of Martinique by troops drawn from those Provinces making it necessary that they should continue their exertions, Massachusetts raised 2000 men, in order to aid in securing the British dominions, and particularly the conquests in her neighbourhood. Never before were the regiments levied so easily, composed so well, nor brought into the field so early as this year.

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year. Soon after the capitulation of Martinique, another enemy was found in the Spanish King, less formidable from the strength of his arms than from the circumstance of the dismissal of Mr. Pitt. The fortune of war began again to be dreaded, lest Canada and the American fishery, which had hitherto been held irredeemable, might by the overruling event of affairs be restored to the French. The requisite additions to the number of men raised as the quota of the Province were made, so as to increase them to 3220 ; and seven pounds bounty was voted to every man, who should enlist in the regular regiments, to the amount of 893. In the month of July an alarming account arrived of the French actually landing and taking possession of the Bay of Bulls in Newfoundland ; in consequence of which not only the trade of the Province was threatened with essential injury, but an extraordinary tax was about to be laid on its inhabitants, by the arrival of nine ships from Halifax with 700 French neutrals on board, whom the aspect of affairs had made it unsafe to retain in Nova-Scotia. By an examen of these people in the beginning of the year 1760, there was found to be 1017
of

of them in the Province, of whom only 394 ¹⁷⁶²₃₇ were able to labour. For the expense of subsisting them, the Province could procure no allowance from Parliament, and so had become subject to indefinite taxation in this way at the discretion of the commanders in Nova-Scotia. The General Court thought themselves justified under such circumstances to repel this burden, and forbid the landing of these unhappy exiles. The partial conquest, which the French made at Newfoundland, was soon lost by the recapture of the posts which they held there; and all the benefit which they derived from this expedition was the interruption of the British fishery, and a general alarm through the Colonies.

During this alarm the merchants of Salem and Marblehead, apprehensive for the safety of their shipping, requested the Governor to afford them protection, when employed in fishing on the coasts of Nova-Scotia. The measures taken in consequence of this application produced a debate between the Governor and the House of Representatives, which serves to shew the degree of jealousy which they entertained of his prerogative, and

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and perhaps of his disposition, and in this view, the whole proceedings are deserving of detail. The provincial frigate being at this time on a cruise, the Governor thought it expedient, after obtaining the advice of the Council, to fit out the armed sloop, then just returned from Penobscot, with fifty men, and to send her to the gut of Causo, where she cruised for about a month, and encouraged the vessels, which were there, to remain and complete their fares. The usual number of men for this sloop was necessarily to be augmented, and the General Court not being in session, the Governor with advice of Council undertook to do this, as well as to make an establishment for their pay; and the expense of the cruise was drawn for upon the appropriation for armed vessels. When the sloop returned, he made application to the General Court to provide for the continuance of her complement of men for a longer time than they were engaged for: instead of which, after observing that there was not the least necessity for it, they remonstrated against the making or increasing of establishments by the Governor and Council: that it was in effect taking from the House of Representatives their most

most darling privilege, the right of originating all taxes, and annihilating one branch of the Legislature; and when once given up, (which no necessity would justify them in doing) the government would become arbitrary: that they might not have troubled the Governor about this affair, had it been the first instance of the kind, but lest it should grow into a precedent, they besought his Excellency, as he regarded the peace and welfare of the Province, that no measures of that nature might be taken for the future, let the advice of the Council be what it might. 1762

The precedents referred to in this answer were the cases of the funeral of Lieutenant-Governor Phipps, and the fitting out of the ship of war King George. In the first instance the heirs of Mr. Phipps, after applying without effect to the Governor and Council, solicited the House of Representatives to bear the expense of his funeral, which they refused. The Governor and Council then liquidated some charges which had been thought unreasonable, and ordered the accounts to be paid. Upon this the House

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House sent a message to the Council, that the advising to fundry warrants, to pay monies for defraying the expenses of burying this officer, was unanimously resolved to be a misapplication of the public monies, and unwarrantable ; and that the House remonstrated against it as an infraction of the constitution. The Council stated the case, and justified their conduct, not however without relying much on their economy, and the peculiarity of circumstances, as a sum equal to the expense of covering the pulpit had been paid immediately, and the residue of the charge had lain two years as unreasonable, and was at last adjusted. In the case of the ship King George, which happened under the administration of the present Governor, in the year 1761, intelligence being received that two privateers were cruising off Block Island, and had taken several vessels bound to and from the Colonies, and the ship having no more than thirty men belonging to her, which number there was no prospect of increasing upon the existing establishment, the appropriation for the service of the ship being also exhausted, the Council advised the Governor to impress seamen, and to enlist volunteers for one cruise upon a bounty of

of ten dollars each, provided the money could be procured ; and for that purpose it was further advised, that a warrant should issue upon the Treasurer for seven hundred dollars, to be paid out of such sums as should be subscribed by any merchants, or other persons, for the above mentioned services, upon the credit of a reimbursement *to be made* by the General Court at their next session.

The remonstrance offered to the Governor was attended with aggravating circumstances. It was passed after a very warm speech by a member in the House ; and at first, contained the following offensive observation : “ for it would be of little consequence to the people, whether they were subject to George or Louis, the King of Great-Britain, or the French King, if both were arbitrary, as both would be, if both could levy taxes without Parliament.”

The Governor was so displeased at this passage, that he sent a letter to the Speaker, returning the message of the House, in which he said the King's name, dignity, and cause were so improperly treated, that he was obliged to desire the Speaker to recommend earnestly

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earnestly to the House, that it might not be entered upon the minutes in the terms in which it then stood. For if it should, he was satisfied they would again and again wish that some parts of it were expunged ; especially if it should appear, as he doubted not it would, when he entered upon his vindication, that there was not the least grounds for the insinuation, under colour of which that sacred and well beloved name was so disrespectfully brought into question.

Upon the reading of this letter, the exceptionable clause was struck out of the message ; but enough remained to excite a vindication from the Governor, which he sent by the Secretary immediately before proroguing the General Court. In this he complained of the imputation thrown upon him, in the charge of taking from the House the right of originating taxes, and annihilating one branch of the Legislature by making or increasing establishments, tending to make the government arbitrary, as neither existing in his intentions nor deducible from his actions : that contingencies would happen, in which the Governor with advice of Council was justified in issuing monies for services
not

not expressly provided for by the General Court, as where a danger arises so immediate and imminent, that there is no time for calling the Assembly together; or where the expense of some necessary service is so inconsiderable, as to be not worth the while to put the Province to the charge of the Assembly's meeting for that purpose, only at an expense vastly greater than the sum in question: that in the present case matters were so managed by drawing off men employed at the Castle, that out of 50 only 24 were charged to the Province: that the measure was a legal and constitutional exercise of the powers vested in the Governor and Council; and that if it were wrong and ill advised (which was not admitted) it could amount to no more than an improper application of the public money by those, who had lawful authority to apply such money to the public purposes; and when this distinction was considered, how could this act, right or wrong, be applied to the right of originating taxes, annihilating one branch of the Legislature and making the government arbitrary?

Although

1763.

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Although the prorogation stopped the voice of the House of Representatives, so as to prevent a reply, yet they found time to appoint a committee to prepare an answer to it in the recess, and to report at the next session, when they failed not to resume their remonstrance against such an unlimited discretionary power, as the Governor seemed to claim, being lodged in any hands but the legislative body of a country who they said was, in all regular governments, the ultimate judge of the good of a people.

They admitted that a discretionary power must of necessity be left with the Governor and Council; but they contended that this ought to be limited by the sum appropriated by the General Court for contingencies arising from sudden imminent dangers, and necessary though inconsiderable services. They quoted the proceedings and language of the House of Commons as to a strict adherence to the essential parliamentary forms of granting supplies only upon estimates, and appropriating the same to services and occasions, publicly avowed and judged necessary. That "the departing from these excellent

excellent methods will by degrees render 1763
Parliament altogether useless, and princes
arbitrary, by lodging in the crown, and in
the ministers, an absolute and uncontrollable
power of raising money upon the people,
which by the wise constitution of Great-
Britain is and can be only lodged with safe-
ty in the Legislature." They declared that
as they were far from wishing the Governor
to give up any part of his Majesty's prerog-
ative, so they thought that the most rational
evidence of their loyalty and attachment to
his Majesty was a decent and vigorous ad-
herence to those principles of civil and re-
ligious liberty, which were the basis of the
best government in the world, or that hu-
man nature was capable of.

The Governor avoided further contro-
versy upon this subject with equal delicacy
and correctness, by observing to the House
that he should have been glad to have sig-
nified his approbation of the general senti-
ments prevailing in their message; to have
assured them that there was no danger of
their differing in fundamental principles of
loyalty and civil liberty; to have testified
his sense of the professions of personal re-
gard

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gard which they expressed for him ; but that he was deprived of that pleasure by perceiving by their votes, that the message was prepared by an order made and a committee appointed at the last session : that upon a prorogation all business that had a regard to the mutual relation of the three branches, was at an end, and if it were to be renewed, it must originate *de novo* : that this was the chief distinction between a prorogation and an adjournment, and was by no means indifferent, and he therefore desired that this might not be a precedent for transferring a business from one session to another by way of continuation.

CHAP. VI.

Peace in 1763—Enmity of parties—Ecclesiastical dispute—Plan for taxing the Colonies—Acts of trade enforced—Proceedings of the House of Representatives thereupon—Indian war—Instructions to the agent against taxing the Colonies and enforcing the acts of trade—Harvard-Hall burnt.

1763

1763.
Jan 12.
Feb. 7.

A MORE pleasing communication very soon followed, in announcing authentic advice, that the preliminaries of peace between Great-Britain, and France and Spain, had been signed. This event both Houses acknowledged with humble gratitude for the protection afforded them by their gracious sovereign during the war, for the frequent grants made by Parliament for their relief, and for the assurances of compensation for the expenses of the last year, without which protection they would have been a prey to the power of France, and without which assistance, the burden arising from their unprecedented expenses would have been insupportable. On this occasion they returned

1763

ed their thanks to the Governor also ; and expressed their wishes that he might long be continued at the head of the government, promoting that interior peace upon which their prosperity so much depended.

The communication of the final ratification of the peace, to the new Assembly of the present year, drew from them an address not less replete with gratitude to the King for the great advantages obtained by it, and with respect for the Governor. They declared themselves sensible of his services during the war ; but as the peaceful and settled state of the country would give him more opportunities of serving it than were then to be expected, they doubted not but he would improve them for the best purposes. They hoped that he would still have the honour of being distinguished in England for his attachment to their interest, which was inseparably connected with the interest of the mother country ; and have further public testimonies from a most grateful people. They declared that the unanimity which the Governor recommended was never greater in the Province than at this time. They doubted not, that as they had been

been delivered from foreign war, they should be equally free from intestine divisions ; and that now peace was diffused through the vast circle of the British dominions, it would continue and prevail in an especial manner in the counsels of this Province, under his wife and impartial administration.

The two Houses also agreed upon an address to the King. In this they returned their thanks to his Majesty for procuring by the treaty of peace concessions equal to their greatest hopes, and expressed their obligations to contribute to the happiness of his Majesty's reign, as far as the remoteness of their situation and the limits of their sphere would admit ; and promised a constant endeavour to evidence their gratitude by every expression of duty and loyalty in their power.

Whatever wishes might have been entertained by the General Court for the interior peace of the Province, and however its pecuniary interests as it respected the reimbursement money and other just causes might have preserved a tranquillity in the Legislature unlike the warmth which prevailed

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veiled without doors, the causes of discord were too effectually established to admit of a union of parties. National distrust had taken deep root from long standing, and personal animosity had entwined itself with the public cause. The preservation of liberty on one side, and the support of good government on the other, were connected with the downfall of individuals in the opposite divisions. A people, professing a jealousy of their liberties, and constantly seeking for a knowledge of their rights, naturally interested themselves in whatever related to the character and conduct of political disputants. Hence private concerns fell under the cognizance of public opinion, and personal charges were brought forward at the bar of the press. The friends of the Lieutenant-Governor's cause charged Mr. Otis with raising his patriotism from the disappointment of his father, who failed in his application for the place of a Judge of the Superiour Court, and with attempting to execute his threat to set the Province in a flame, in case he should not obtain it. Mr. Otis in return disavowed all such motives and threats, and charged Mr. Hutchinson with duplicity and intrigue in obtain-

ing

ing the place of Chief Justice, to the exclusion of the elder Mr. Otis's application. (163) Other persons also were drawn forward by name in the newspapers, and the ferment was kept up by a mixture of various subjects of controversy.

Amongst these was a dispute between the Episcopalians and Dissenters, which may be considered as falling more peculiarly within the ecclesiastical history of the country, but which from its intimate connexion with politics, and from its dividing the inhabitants into the same parties, as well as from the general interest which it created in their feelings, may not be thought an improper subject to be mentioned in this work. The general opposition of those sects of christians from the planting of the Colony is commonly known. In the year 1701 the Society for propagating the gospel in foreign parts was incorporated in England; and being established by Episcopalians, was naturally looked to by them for the spreading and supporting of their church. This Society had sent and was maintaining about thirty missionaries in New-England; and a jealousy prevailed amongst the Dissenters that

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that the congregations, which were aided by these missions, were designed to introduce an Episcopal sovereign, to whom their own churches might at length be made subservient. The incident, which awakened the controversy on this subject, at a moment when the spirit of party attached itself to every thing which could be moulded to its purposes, was the death of Doctor E. Miller, one of the Society's missionaries over an Episcopal church in Braintree. The manner, in which this was related in the Gazette, was considered as disrespectful from the sarcasm that was thrown upon his congregation, as though they came within the description of persons amongst whom it was the proper object of the Society to propagate the gospel, and who, in the writer's view, were the negroes and Indians of the country.

*Dr Miller**Dr Mayhew*

The paragraph was pointedly resented by the Rev. East Apthorp, another missionary of the Society at Cambridge, where a church had been lately erected. He seized this occasion to undertake the defence of the Society's conduct, as consistent with the powers vested in it by its charter, and once for all

*East Apthorp**1763*

to settle the question, whether it had misapplied a fund originally limited to the conversion of the Heathen. In this defence the writer laboured to prove, that it was a direct and immediate object of the Society to propagate the gospel in the British Colonies and plantations. But Mr. Apthorp's considerations, instead of settling the question once for all, drew from the pen of Doctor Jonathan Mayhew observations on the charter and conduct of the Society, with remarks on Mr. Apthorp's considerations, and various incidental reflections relative to the church of England, and the state of religion in North-America. The acumen and celebrity of this performance placed the author of it first on the list of polemics in this country, and gave him a high reputation in Europe. After several strictures upon it in New-England, two of which were particularly replied to, an answer to Doctor Mayhew's observations appeared in London, and was attributed to the Archbishop of Canterbury himself. If this writer conceded too much in his argument, to save the victory as a disputant, he lost nothing of the dignity and candour which became him as an arbiter in this controversy, and which

was

No!
 By James
 at Adams.
 Bishops could
 not be established
 in America
 without an Act
 of Parliament.
 Parliament
 was the Holy
 Gable.

was due to his high station in a christian church. This brought forward a second defence with zeal little diminished on the part of Doctor Mayhew, and with enlarged observations on the settlement of Bishops in North-America: and a review of this defence by Mr. Apthorp seems to have closed the dispute of these writers. The connexion between this contest and politics consisted chiefly in the impression made on the public mind, that the establishment of Bishops would be attended with the exercise of temporal powers similar to those which they possessed in England; and that the solicitude of the Society to plant missionaries, where the benefits of the gospel were administered, though not according to the ritual of the church of England, had been the means of neglecting the Indians on the borders, and so losing an influence over them, which might have prevented the cruelties of war.

Whatever advantages eventually accrued to civil or religious liberty from this controversy, its immediate effects were little calculated to advance the mild spirit of the gospel. The heat with which it was carried on regenerated

generated the ancient enmities, by calling up to view the former conflicts of the litigating parties. The persecution of the Dissenters by the church of England before the settlement of America took place; their intolerance to Episcopalians and other sects afterwards; their cruelty to the Quakers; the relative state of morals among the existing members of the different communions, and even the conduct of individual characters, were forced up in the accusation and defence of the Society for propagating the gospel, and all this with a guise of using sharp expressions and personal invective under protestations of candour and good will, which gave too great a complexion of cant and insincerity to the debates of the times in general. These writings therefore may be considered as increasing the divisions, which were rising in Massachusetts as in a point, whence with diverging influence they were about to spread over the American and European world.

The spirit displayed in the Province of Massachusetts Bay was truly hostile to any alterations in its government. There was

no

no torpor to invite encroachments upon civil rights by stealth ; and the divisions were too unequal in point of numbers to afford hope for the operation of force. The only channel, through which the Colonists could be approached by the government in England therefore, was in those external regulations of trade, which they had conceded to be under its control. No time was lost in beginning on this ground, and converting those regulations into sources of taxation. Before the peace had extended to the Indians, the first lord of trade with a view of raising a revenue from foreign molasses imported into British Colonies, moved for a reduction of the duty, which stood so high as to amount to a prohibition, or would have operated so, had not the act been wholly neglected, and the trade connived at. This motion was sustained and produced a bill for the purpose, which was referred by the House of Commons to the next sessions. A plan was likewise framed by Mr. Grenville, for laying a direct internal tax on the Colonies by a stamp act. This also was postponed. In the mean time the lords of the Admiralty issued their instructions to the commanders of the navy in America, to enforce

Taxation

Grenville

force the several acts of trade, that is, the navigation act and others, by which it was provided, that no goods should be imported into or exported from any of his Majesty's plantations, except in vessels built in and belonging to the people of England, or Ireland, or such plantations; and whereof the master and three quarters of the crew, at least, should be English: that no product or manufacture of Europe, excepting wines from Madeira and the Azores, servants, horses, and victuals from Scotland, and victuals from Ireland, should be imported into such plantations, without being laden and shipped in England: that all vessels in the plantations should be subject to the same searches, and all Custom-House officers there should have the same powers, as in England: that the Treasurer and Commissioners in England should appoint officers in the plantations, and that ships trading there should be registered, &c. By one of these laws it was declared, that all laws made by any of the Colonies inconsistent with any act of Parliament should be void. This, as it respected Massachusetts, was either superfluous, or shewed a distrust of the power of the King in Council, by whom the laws passed

passed in this Province were subject to be disapproved within three years. Deputations also were sent to seize prohibited goods. But the strongest apprehensions arose from the publication of the orders for the strict execution of the molasses act, which is said to have caused a greater alarm in the country than the taking of Fort William Henry did in the year 1757.

Although opposition was not so settled and arranged, as to enable it to be active against these threatening proceedings; yet they did not pass unnoticed by the House of Representatives, who drew up instructions to their agent, to use his endeavours to obtain a repeal of the sugar act, and to exert himself to prevent a stamp act, or any impositions or taxes upon this or the other American Colonies; in addition to which they also made a statement of the rights of the British Colonies in general, and of Massachusetts in particular. These however, being referred to a committee on the agent's letters, appear to have been checked, at this time, by them. But the House proceeded to choose a committee, to write to the other governments, in the recess of the General Court, to acquaint

quaint them with the instructions, and to desire the several Assemblies to join them in the same measures. At the close of the session the Governor prorogued the Court, with expressions of applause for their unanimity.

The embarrassments of the General Assembly in a financial view were lessened by the receipt of the reimbursement money granted by Parliament for the year 1761. But they were greatly increased by the irruption of a general Indian war, which might have again made the aid of the mother country of much importance. Although this evil fell more immediately on the frontiers of the southern Colonies; yet it was made a common cause in the view of the King. And General Gage, who had become Commander in Chief by the departure of General Amherst, proposed to collect a respectable force at Niagara in the spring, to carry the war into the country of the Indians upon the lakes, whilst a force from those Colonies should execute a similar plan upon the River Ohio. For this purpose he required 700 men of Massachusetts: and the Governor demanded 200 in addition

42,774*l.* 16*s.*

addition to these, to enable him to protect the eastern country. The House of Representatives availed themselves of the circumstance of terms of peace being proposed by some of the principal tribes, which were accepted by the commanding officer at Detroit, to wave the further consideration of General Gage's requisition. But instructions arriving from the Secretary of State, enforcing the measures recommended by the Commander in Chief, the Governor urged them again upon the General Court, when the House again declined, for reasons given at large, to assume this burden upon the Province at the present time. These reasons he engaged to lay before the Secretary of State, not without expressing his apprehensions, that by their refusal, they would counteract other purposes, which they had been prosecuting in the course of the session, of infinitely greater consequence than the expense of the men required.

About this time there was a pause in the opposition to the measures of the crown and Parliament, which might have given some appearance of the conciliation of parties, but which was more probably owing to the uncertainty

certainty of the eventual plan of the ministry, and the proper ground to be chosen for counteracting it. The suppressing of the proposed instructions to the agent by a committee of the House of Representatives, indicated that this balance of power there was unsettled. Several circumstances shewed a less inflexible spirit than had existed among the leaders. The Governor appointed the elder Mr. Otis a Justice of the Court of Common Pleas and Judge of Probate for the County of Barnstable. The younger wrote a pamphlet on the rights of the British Colonies, in which he acknowledged the sovereignty of Parliament, as well as the obligations of the Colonies to submit to such burdens as it might lay upon them, until it should be pleased to relieve them, and put the question of taxing America on the footing of the common good. Lieutenant-Governor Hutchinson, after being so hardly pursued as to his eligibility as a Counsellor, almost regained his popularity with the House of Representatives in the present exigency of public affairs, which made it expedient to choose an additional agent to be sent immediately from this country to England. The General Court were induced to adopt this measure

measure from several causes. The spirit which was shewn towards America by men in power cast a deadly influence upon her liberty. It was beginning to act through the channel of commerce. The merchants of Boston and the other sea ports in the Province, anxious to repel this impending evil, presented a petition that measures might be taken to preserve the trade from the pernicious effects of the sugar act and other regulations connected with it. The reasons given in this petition, as well perhaps as the strange acquiescence of Mr. Mauduit in the views of the ministry, and his feeble manner of soliciting for the reimbursement of the expense of maintaining the French neutrals, brought the General Court to the resolution of choosing an agent, to act jointly with him in England. No man in the Province was generally considered more suitable for this appointment than Mr. Hutchinson ; and he was in such favour with the members, as to receive all the votes but eight in both Houses. An embarrassment arose, however, which entirely frustrated his entering upon a charge, which, if undertaken, would, probably, have accelerated his private fortunes, and perhaps changed

changed the future political circumstances of the country. The office of Lieutenant-Governor afforded him neither profit, nor employment; yet it was considered by the Governor as an appointment of such a nature, as made it improper for him to be absent from the Province without permission. In this opinion he acquiesced, and returned an answer to the Assembly, that some difficulties rendered it impracticable for him to proceed to England immediately, but that these would probably be removed in a few months; and so left it with them either wholly to excuse him or to suffer him to engage in the business, when he might be at liberty to undertake it. The importance of the objects in question now afforded an opportunity to Mr. Hutchinson's enemies to oppose him with success, as delay might operate, in such a case, to the great injury of the country. Eventually the House voted by a majority of nine to excuse him in consequence of his letter; but the Council being divided, this vote was considered as being non-concurred; thus the business was left unsettled to his great mortification, as he had expected an indulgence in this instance,

stance, and complained to his friends that the question was taken when he was absent from the Court, and many leading members of the same sentiments had accompanied him. He still entertained an expectation that the vote might be renewed by the succeeding Assembly ; and he thought himself entitled to it by thirty years service, particularly by projecting and substituting specie for a paper currency under such great difficulties as he had opposed ; and with this impression he wrote to Lord Halifax for leave to absent himself from the Province, in case of his being again called to the agency. But he had passed the summit of his popularity, and was now about to descend into the vale of public censure, cheered only by the light of his own mind, and the temporary sunshine of royal favour.

Although Mr. Hutchinson was not finally appointed to the agency in England, yet the General Court appear to have availed themselves of his services, in draughting instructions to Mr. Mauduit against the several acts of Parliament, so detrimental to the trade and fishery of the Province. Upon the subject of the sugar act the arguments were

were of the same nature with those, which have been already stated. The business of the fishery, which, it was alleged, would be broken up by the act, was at this time estimated in Massachusetts at £164,000 sterling per annum; the vessels employed in it, which would be nearly useless, at £100,000; the provisions used in it, the casks for packing fish, and other articles, at £22,700 and upwards: to all which there was to be added the loss of the advantage of sending lumber, horses, provisions, and other commodities to the foreign plantations as cargoes, the vessels employed to carry fish to Spain and Portugal, the dismissing of 5000 seamen from their employment, the effects of the annihilation of the fishery upon the trade of the Province and of the mother country in general, and its accumulative evils by increasing the rival fisheries of France. This was forcibly urged as it respected the means of remittances to England for goods imported into the Province, which had been made in specie to the amount of £150,000 sterling, beside £90,000 in the Treasurer's bills for the reimbursement money, within the last eighteen months. The sources for obtaining this money were through foreign countries

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countries by the means of the fishery, and would be cut off with the trade to their plantations. As to the unconstitutionality of this law on the principles of taxation it was observed; that the inhabitants of this Province were empowered by their charter, and his Majesty's other Colonies were empowered by the commissions under which they were governed, to raise monies for the support of their respective governments. If duties and taxes were to be laid upon them in any one instance, what assurance had they that these would not be so multiplied, as to render this privilege of no importance to them. They had at all times done every thing that could be expected from them in support of his Majesty's government, and in time of war they had gone beyond this, and had therefore been relieved by favour of Parliament: that they were still disposed to do every thing in their power, and hoped that it would be thought as reasonable that the Assemblies of the Colonies should determine what monies should be raised upon the inhabitants here, as that the Parliament of Ireland should determine the monies to be raised upon the inhabitants there: that the growth of the Colonies depended upon the
the

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the enjoyment of their liberties and privileges ; and-as they increased so their trade with Great-Britain would increase, which was a consideration of far greater importance to the nation, than the profits that could arise from any duties or taxes with which they might be burdened. The agent was directed to endeavour to procure the agents of the other Colonies, to join with him in this common concern, and to select such characters to conduct it in Parliament, as would be most capable of effecting it in a way expressive of their firm allegiance to the best of kings, of their grateful sense of the numerous favours conferred on them by Parliament, and of their humble hopes of a continuance of its favour : that they could not but hope, if the business should be properly conducted, that no taxes nor duties would be laid upon the Colonies, whilst they remained unrepresented in Parliament, whose displeasure could not be incurred by the principles which they acted upon, these being the same which actuated their own minds, the principles of liberty and of the constitution.

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The instructions were also extended to the act of 15th of Charles II. and stated the hardships and injury of carrying certain commodities, the growth of Europe, to England, before they could be imported into the British Colonies; that the expense of carrying some articles received for fish in Spain and Portugal to London, to enter them in the Custom-House there, would be so great as to exceed the amount of the cost, and many times the value of the duty also; and fruit so necessary for the health and comfort of the inhabitants would be lost from the length of the voyage: nor could the act be supposed to intend a prohibition, as the bringing of those articles directly to the Colonies was no prejudice to Great-Britain. Wine was admitted, by the act, from Madeira and the western islands. As this had increased in value so much, from the great use of it in England, as to put it out of use in the Colonies, and by their growth their own demands for the wines of the western islands had enhanced the price of them fourfold within thirty years, beside a heavy excise, necessarily laid upon them, it was but reasonable that they should be allowed to import the articles enumerated
directly

directly from Spain, Portugal, and the Mediterranean, the places of their growth. The agent was therefore instructed to apply to Parliament for this liberty ; and the rather, as by the strict execution of the orders lately issued from the board of trade to the naval commanders, indulgence would no longer be given, and seizures had taken place, and would probably be continued to the ruin of the merchants.

The public business was interrupted this year by the spreading of the small pox in the capital, which obliged the General Court to adjourn to Cambridge, and thence they were compelled to proceed to Concord, by the accidental burning of Harvard-Hall in which they held their sittings. This event, the effects of which upon the repositories of science are not now to be discerned by any unfavourable marks, was at first exceedingly alarming to the cause of literature. The library consisting of near five thousand volumes was destroyed, excepting a few books ; and the apparatus said to be the best furnished in America was likewise ruined. Although government had very lately erected
Hollis-

Hollis-Hall at a great expence, yet the members of the General Court unanimously voted to rebuild the principal edifice of the College, which had been demolished by an accident resulting from the means of their accommodation. A faithful execution of this vote, with the liberal donation of individuals and the application of the friends of the university having supplied an elegant building and more than 13,000 volumes, leaves us nothing perhaps now to lament from this catastrophe.

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CHAP. VII.

Act for raising a revenue in the Colonies passed—Opinions and arguments of the opposite parties on the subject—Objections of the House of Representatives contained in their instructions to their Agent—Committee chosen to write to the Assemblies of the other Colonies—Measures resorted to by the people: association for the non-consumption of British, and encouragement of their own, manufactures—Governor repeatedly prorogues the General Court—Clamours against him—Petition of the General Court to the House of Commons.

ALTHOUGH the British ministry postponed the plan for raising a revenue from the trade and laying other duties in America; yet it was done with reluctance, and indicated no design of finally abandoning these measures; as Mr. Grenville declared his resolution to convince the Colonies, that they were as subject to an inland tax, as to any other imposed by the Legislature of Great-Britain. Accordingly in the spring of this year,

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J. Hulse's
Letter.

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year, he began to execute his scheme in Parliament. This was not a difficult task, when he had once determined to pass by those great constitutional principles, which Englishmen had never renounced, and which their descendants in America had still stronger motives to maintain at the hazard of their property and lives. These principles aside, he could not fail of succeeding in demonstrating to the House of Commons facts, of which their burdens were the evidence, and inferring the fitness of drawing in to their aid those, who were represented as overflowing with plenty, unembarrassed with taxes, and distinguished by unequalled ease and happiness. He soon convinced them of the impoverished state of their finances: that beside all the former load of debt, the last war had created seventy three millions, sixty three millions of which were the work of the four last years of it; and in addition to all this, the Germans claimed seven millions of arrears: that the state of the national income made it indispensably necessary that every part of the government should contribute to the utmost to lighten the public burden; and that the whole charge of the American governments being three hundred

dred and fifty thousand pounds, it was high- 1764
 ly reasonable that they should submit to the
 taxes he was about to impose upon them.
 The House therefore came to several resolu- *Resolutions*
 tions of the following tenor. That duties *to tax*
 be laid on various enumerated foreign arti-
 cles imported from any place (excepting in
 some cases from Great-Britain) into the
 British Colonies and Plantations in Ameri-
 ca ; and a duty upon other articles, the pro-
 duce of the Colonies, exported to any other
 place than Great-Britain : that a duty of 3d. *on Molasses*
 sterling per gallon be laid on molasses and *Syrups*
 syrups and an additional duty upon white
 sugars of the growth of any foreign Amer- *Sugars*
 ican plantation, imported into the British
 Colonies : that the produce of the duties so
 to be laid be paid into the Exchequer, and
 these reserved to be from time to time dispos-
 ed of by Parliament towards defraying the
 necessary expenses of defending, protecting,
 and securing the British Colonies and Planta-
 tions in America : and that towards further
 defraying the said expenses it might be proper
 to charge certain stamp duties in the Colo- *Stamps*
 nies. A bill was accordingly brought in and
 enacted for imposing the duties as resolved
 upon, except as to stamps, which was post-
 poned

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J. Mauduit's
M S. Letter.

poned to the next year, "in complaisance to the Colonies, to give them an opportunity to pass it themselves, or some other equivalent; Mr. Grenville being willing, as he expressed himself, to consult the ease, the quiet, and good will of the Colonies," or rather being desirous to make his experiment of taxing trade before he ventured upon internal taxation. In this triumphant career of the minister, the voice of America was silenced, by a rule of the House of Commons not to receive any petition against a money bill. This rule must have been founded on the principle of the people, who were to pay the tax, being present by their delegates in Parliament, and evidently proved the absurdity of the case before them, wherein they were the only party neither actually nor virtually represented. As this act for raising a revenue in America was the great mistake, by which the Colonies were lost to Great-Britain, it will be worth the research to ascertain the causes from which it arose. These were without doubt derived principally from the pressure of the national debt at the conclusion of the war, and an ignorance of the most effectual mode of drawing the aid of the Plantations to the relief of the mother

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 mother country, or an impatience inconsistent with the pursuit of it ; but the interests and passions of particular classes of men and of individuals were exceedingly operative in this great event, as will appear from a view of the principles and conduct of the acting parties. The advocates for taxing America may be considered in two divisions, one in that country, and the other in England. Both agreed to establish the right of Parliament to levy taxes ; but their views as to the mode of raising and finally appropriating them were different. The minister was desirous of receiving them through the Exchequer ; the royal party in America was for collecting and expending them here. Some however were for dividing the spoil, by leaving the external taxes to the minister, and keeping the internal at home. Among the friends of this latter plan Governor Bernard must be placed. He had been observing the nature of the several governments in the Colonies since his residence in them, and this year he collected his opinions into form under the name of principles of law and polity. In these he asserted, that the rule of a British subject not being bound by laws, or being liable to taxes, except what

Bernards
Principles
of Law and
Polity.

1764 what he had consented to by his representatives, must be confined to the inhabitants of Great-Britain only, and was not strictly true even there : that the Parliament of Great-Britain, as well from its rights of sovereignty, as from occasional exigencies, had a right to make laws for and impose taxes upon its subjects in its external dominions, although they were not represented in such Parliament : that a representation of the American Colonies in the imperial legislature was not impracticable, and was to be determined by expediency only, but was not necessary to establish the authority of Parliament over them : that taxes so imposed ought to be applied to the use of the people from whom they were raised : that Parliament had a right to provide for the defence, and to take care that provision be made for a sufficient support of the American government : that the port duties being most properly applicable to the defence of the Colonies, the support of the governments should be provided for by internal duties : that it would be advisable to leave to the provincial legislatures the raising of the internal taxes ; for if the sums required were fixed, there would be no inconvenience in
letting

letting them determine the manner in which they should be raised : that the establishment of an independent civil list was expedient : that the charters could not be intended for perpetuity, because they were in many things unconstitutional and contrary to the very nature of a British government : that America was capable of a nobility for life ; and that the people at this time expected a revival and reformation of the American governments, and were better disposed to submit to it, than ever they were, or perhaps ever would be again. 1764.

These outlines of the American royalists serve to shew, that they designed to leave their country nothing independent of the will of Parliament. The subjection was so complete, as to become incompatible with the idea of virtual representation in the view of its projectors : for however such a representation may exist, where the representatives, although not elected by their principals, are in the same interests ; yet where these are different and even opposite, the fallacy of the doctrine becomes too apparent for support in the mind of the boldest visionary. To a member of the House of Commons

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mons it would become a temptation beyond resistance to vote a tax from his own purse to the Americans: it was therefore a part of this plan, that they should be admitted to a representation in Parliament, at least until the form of their government was settled;—a privilege which they contended was impracticable from local causes, and would be highly injurious to them for various reasons; and which, on the temporary plan suggested, was only the right of forging their own chains.

The similarity of these principles of law and polity to the measures actually adopted by the British minister concurred, with other circumstances, to excite and fix suspicions in the minds of the people of Massachusetts, that the idea of taxing them did not originate in England; and Governor Bernard began to lose their confidence, which continued to be abated, until it was irretrievably gone.

The American idea of the authority of the mother country, and of the most expedient system of governing, was far different. The people held it to be their essential right

as

as Englishmen, not to be subject to any tax, but what they had a voice in laying in person or by their representatives : that this principle had been admitted in practice, by the Colonies being allowed civil governments of their own, who had always voted supplies to the King greater than their proportion of the national expenses, and were supported by their constituents : that their representatives in these governments were the only proper judges of their ability to grant money, a British House of Commons being at too great a distance to be well informed, and too much interested in laying heavy burdens upon the Colonies in order to lighten their own : that a representation within the Colonies was the more necessary, from the peculiar weight of taxes laid upon them, on account of their being kept indebted in England by the regulation of their trade, to a greater amount than all the specie of the country would pay : that a taxation without representation, having no check, would leave them nothing their own : that the system of internal taxation was not the most expedient system of governing the Colonies, whilst Great-Britain could obtain
all

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all which they could yield without it : that she enjoyed through them an extensive trade, by the absolute and uncontrollable regulation of which she drew to herself the fruits of the labours of many thousands, without alienating their attachment to her : that she had the liberty of introducing among them such East-Indian and European articles as she pleased, the latter of which she was able to supply, without going abroad for them : that it was evident that Great-Britain by these means drew every thing from the Colonies which they could send, by the course of exchange, which was constantly rising, except during a war, when European goods were exchanged for foreign sugars and other articles, the prices of which were high in Europe ; and after all great sums remained due to merchants in London : that it resulted hence, that the way to reap still greater advantages from the Colonies was so to enlarge their trade, as to furnish them with more valuable remittances, particularly to extend their trade to the neutral ports in the West-Indies ; for if the English islands furnished a sufficient quantity of sugars, whatever more was procured would be exported and brought again home by the course

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course of a regulated importation of British manufactures ; and, on the other hand, if those islands should not furnish a sufficient quantity for consumption, the price that would be paid for the deficiency, during the present restraint, would much lessen the amount of remittances to England. Even money sent to the French islands could be no injury to the nation, since by purchasing their produce at first hand, the Colonists would acquire all the profits of transporting it to foreign ports : But not permitting them to exchange for West-India produce that lumber, which must otherwise be burnt, was highly absurd. Could a good reason be given why they should not change their ashes into sugar ? Perhaps allowing them to bring wines, subject to a duty, directly from Spain and Portugal would be politic, in the view of increasing their means of remittances : that as in Europe it was esteemed wise for Great-Britain to take off French wines in return for beef and bread, by which means France in time of war was put to the greatest difficulty in victualling her fleets and armies, so the Colonies producing those articles ought to be encouraged as the firmest support of her empire in America, because the

French

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French and Spaniards, depending on them for provisions, were driven to the greatest distress in war, and were forced for a scanty supply to surrender their wealth; and therefore that no opening of trade between the Colonies ought to be discouraged, as this advantage was ever on the side of Great-Britain: that she having it thus in her power to draw all the wealth, which her Colonists could accumulate, by a regulation of their trade, to attempt to get more by internal taxation would be like felling the tree to gather the fruit.

Nor was external taxation conceded to the Parliament by all. A distinction was made between it as a regulation of trade, and as a source of revenue; for sufficient imports might be invented to collect all the circulating money of the Colonies. Mr. Hutchinson appeared to be impressed with this opinion, and indeed to think that the authority of Parliament to raise a revenue in America ought to be acquiesced in rather on the ground of expediency than right. In a letter to Mr. Bollen he observed, "If the Parliament begin with internal taxes, I know not where any line can be drawn. If it be
said

said that there is none but their discretion,
 we are in danger of unequal distressing bur-
 dens, which finally must affect the nation
 as much as the Colonies themselves." And
 in writing to another friend, when speaking
 of the distinction between duties on trade
 and internal taxation, he observed, "that
 this distinction agrees with the opinion of
 the people in England, and with the opin-
 ion of most people here. Mr. Bernard is
 full with you in it. I think it imprudent to
 oppose it, and therefore am silent, but it is for
 this reason only. I am for saving as much
 of our privileges as we can: and if the peo-
 ple of England make this distinction, I think
 it tends to strengthen us in our claim to ex-
 emption from internal taxes. Really there
 is no difference, and the fallacy of the argu-
 ment lies here. It is supposing duties upon
 trade to be imposed for the sake of regulat-
 ing it, whereas the professed design of the
 duties by the late act is to raise a revenue.
 Can it possibly cause any difference to the
 subject to impose a duty to be paid as an
 impost, or to impose a duty of excise to be
 paid by the licensed inland vender? The con-
 sumer pays just the same in the one case as
 the other; and the rights of the people are
 alike

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His copy of
 a M. S. Let-
 ter, Nov. 7,
 1764.

1764 alike affected in both cases. If they would stop where they are, I would not dispute their distinction with them, but if they intend to go on, there will be a necessity of doing it, for they may find duties on trade enough to drain us so thoroughly, that it will not be possible to pay internal taxes as a revenue to them, or even to support government within ourselves." It also appears that Mr. Hutchinson drew up a state of the claims of the Colonies and the interest of the nation with respect to them, and transmitted it to his correspondent in England, with a view of serving their cause in some publication there, but with express injunctions, that whatever was done, it should not be suffered to be known that the work came from him.

Hutchinson's
M. S. letter-
book.

As to the actual exercise of the right of taxation on the Colonies by the Parliament, precedents seem to have been made only in the following instances. An act of 25th Charles II. c. 7. imposed a duty on enumerated articles. A tax was laid upon mariners, and deducted from their monthly wages; which was finally appropriated to the support of such, as became the subjects of Greenwich Hospital. The General Post-Office

was

was established also by an act of Parliament ; and lastly the sugar act, which had been so long suspended, and was now formed on a new model, and about to be put into operation as an introductory step to a system of revenue. The advocates for the Colonies contended that the act of Charles II. being passed in an arbitrary reign, whence precedents relating to the rights of the people could not be fairly adduced, ought rather to be considered as an exercise of power than of acknowledged law. The two next instances, they alleged, were done for the immediate advantage of the trade of the country, and the sugar act was rather prohibitory than for the purpose of taxation.

In this unsettled state of rights and opinions the Parliament passed the law for granting certain duties in the British Colonies and Plantations in America ; and the minister, foreseeing its unpopularity there, inserted a clause to secure its execution, which proved to be as objectionable respecting the rights of Americans, as its general principles. Penalties for the breach of this act, or any other relating to the trade and revenues of the British Colonies, incurred in America, were

were made recoverable in any Court of Record or in any Court of Admiralty in the Colony, where the offence should be committed, or in any Court of Vice-Admiralty, which might be appointed over all America, at the election of the informer or prosecutor. Thus a trial by jury might be taken away, and a defendant might be forced from one end of the continent to another, to support his claim in a Court of Vice-Admiralty at an expense perhaps beyond the value of the property in question. And after all, the act provided that he should recover neither costs nor damages, if the Judge should certify that there was probable cause of seizure.

The murmurs and discontents of the last year, excited by the enforcing of the laws of trade, were increased by the present act; and several seizures to the amount of about £3000 sterling, one third of which was appropriated to the Governor, heightened the animosities which had been raised against him. The influence, which had preserved caution, and sometimes a silence, in the General Court, was now broken. When they met at their first session, after declining to enlarge the establishment of two companies, raised for

for the defence of the eastern country, the House of Representatives drew up in decided and pointed language a letter of instruction to Mr. Mauduit, the agent for the whole assembly in England. This was founded on several letters from him, in which he had misconstrued their silence upon the business of the tax on molasses, and even the quartering of 10,000 troops in the Colonies, into an assent to those measures. In this they observed, that volumes had been transmitted from the Province in relation to the sugar act, to little purpose: if a West-Indian or any other bye influence was to govern and supersede their most essential rights as British subjects, what would it avail them to make remonstrances, or the most demonstrable representations of their rights and privileges? that the sudden passing of the sugar act, and continuing a heavy duty on that branch of their commerce, they thought was far from proving, that any solid foundation existed for a hope which he had expressed, that a general disposition would be found to serve the Colonies and not to distress them: that no agent of the Province had power to make express concessions in any case without ex-

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Instructions
to Mauduit

June 15

press orders; and that the silence of the Province should have been imputed to any cause, even to despair, rather than to have been construed into a tacit cession of their rights, or an acknowledgment of a right in the Parliament of Great-Britain to impose duties and taxes upon a people, who are not represented in the House of Commons: that they were still more surpris'd at his letter respecting the quartering of an army on the Colonies. We conceive, said they, nothing could restrain your liberty of opposing so burdensome a scheme. What merit could there be in a submission to so unconstitutional a measure? It is time enough for us to make a virtue of necessity, when we are obliged to submit to so unreasonable an establishment. Is there any thing in your power of agency, or in the nature of the office, that can warrant a concession of this kind? most certainly there is not. We are extremely obliged to Mr. Grenville, "for his kindest expressions of regard to the Colonies." But we cannot conceive it any vast favour that he will not think of "any thing from America for the relief of Great-Britain." Nor can we conceive it to be exactly agreeable to equity and justice that America
"should

“ should be at the whole charge of its government and defence.”

“ The northern Colonies have, during the late war, exerted themselves in full proportion to Great-Britain. This Province in particular had in one campaign on foot seven thousand troops. This was a greater levy for a single Province, than the three kingdoms had made collectively in any one year since the revolution.”

They observed that the Colonies had defended themselves for more than a century against the French and Indians, with very little assistance from England ; and were still obliged to keep up many large military establishments. In this situation how grievous must it appear, that their mother country should cut off their resources, and oblige them to pay such heavy taxes for support of regular forces out of their own Colony. And granting, said they, that the time may come, which we hope is far off, when the British Parliament shall think fit to oblige the North-Americans, not only to maintain civil government among themselves, for this they have already done, but to support an army

to protect them ; can it be possible that the duties to be imposed, and the taxes to be levied, shall be assessed without the voice or consent of one American in Parliament ? If all the Colonists are to be taxed at pleasure without any representative in Parliament, what will there be to distinguish them in point of liberty from the subjects of the most absolute prince ? For besides maintaining internal provincial civil government, among themselves, they must pay towards the support of the national civil and military governments in Great-Britain. Now it is conceived that no people on earth are doubly taxed for the support of government.

“ If it should be said that the late acquisitions in Canada are beneficial to the trade of the Colonies, it is certain that these conquests will add to the commerce of Great-Britain, but is not of any particular advantage to that of the Colonies. We reap nothing from these conquests of his Majesty's arms, to which we have contributed so much, but what is common to all his Majesty's loyal subjects, except a more immediate security arising from a power equally hostile, though not equally dangerous to all parts of his Majesty's

Majesty's dominions, being depressed, and made to ask their peace of his Majesty's goodness."

They complained of the rapid manner in which resolutions were passed into acts of Parliament. This was done before they could receive information of their existing. Every charter privilege, they observed, might be taken from the Colonies by an appendix to a money bill, which it seems, by the rules on the other side of the water, must not at any rate be petitioned against. To what purpose would an opposition to any resolutions of the ministry be, if they were passed with such rapidity, as to render it impossible for the Colonies to be apprized of them before they received the sanction of an act of Parliament?

As to the deferring of the stamp act they observed, that the offer of suspending it in the manner and upon the condition mentioned amounted to no more than this, that if the Colonies would not tax themselves as they might be directed, the Parliament would tax them.

The

The fixing the duty on molasses at three pence per gallon seemed to them repugnant to the assurances given from the ministry, that the Colonies were not to be taxed for the support of the government at home ; for if America were to be taxed for her own government and more immediate protection only, and two pence might yield enough for that, to what purpose would it be to lay three pence ? and the duty, in all good policy, should have been low at first, if it was right to lay any, and it might have been increased by degrees as it would bear. But the business, if it would bear any thing, would admit only of a light duty.

They observed that Ireland was a conquered country, which was not the case with the northern Colonies, except Canada ; yet no duties had been levied by the British Parliament on Ireland. No internal nor external taxes had been assessed upon them but by their own Parliament, although many prohibitions had been made : that the laying of these on dominions not represented in Parliament should be exercised with great moderation, but that this had better be exercised with the utmost rigour than the power of taxing :

taxing : for that this last was the grand barrier of British liberty ; which if once broken down, all was lost : that, in a word, a people might be free and tolerably happy without a particular branch of trade, but without the privilege of assessing their own taxes, they could be neither.

These instructions were accompanied with a brief state of the rights of the Colonies, and were ordered to be entered on the journals. *June. State by Olin*
 The House then made choice of a committee to sit in the recess of the Court, and write to the other governments, to acquaint them with these instructions, and to desire the several Assemblies on the continent to join with them in the same measures for obtaining a repeal of the sugar act, and preventing a stamp act, or any other impositions and taxes, upon this and the other American Provinces.

The resolutions adopted by the House of Representatives at the present session, and particularly that which invited the other Colonies to associate in their opposition to the ministerial system of revenue, constituted an important leading measure in the revolution *Invitation to a Congress*
 of

*Declaration
of Rights &
Proclamation
of War*
of the country. It was a declaration of rights, and a proclamation of political war between the patriots and the friends of the British government in Massachusetts. The bold and oppressive act of Parliament, which was about to come into force, and the still more oppressive and impolitic scheme of the threatened stamp act, prepared the minds of the merchants at first, and afterwards of the inland inhabitants for the unequivocal opposition which was to be expected to parliamentary authority. Yet this opposition was not so ripened, as to enable the patriotic party to gain such a victory by the mere strength of their superiority in numbers. Address was found to be necessary in the defence, as it had been frequently used in the attack upon the rights of the Colonists; and the advantage of opportunity perhaps gave them their ascendancy at this juncture. The instructions were passed at the last day but one of the session: and the management of Mr. Hutchinson was evaded by his previously going upon the circuits, accompanied by some of the members of the same opinions with himself, whilst others had withdrawn to their several towns. He was undoubtedly much chagrined by the surprise, and considered it
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M. S. letter-
book.

as connected with his loss of the agency ; since he asserted, that had he been chosen, very few members would have desired to clog him with instructions so inconsistent with his own sentiments. But his hope of the agency had now vanished, not only from the complexion of the House of Representatives, but from a denial of his request to the King for leave of absence from the Province. The evil of his defeat therefore, consisted in the loss of that general influence and success, which it was necessary for him to preserve, in reality or in appearance, for other purposes of still more magnitude, which, it is highly probable, he now began to contemplate. He accordingly reprobated *Hutchinson's* this step, so rash in his view, particularly the *taxation*, madness, as he termed it, of inserting the instructions on the journals of the House, and directed his whole policy to counteracting its effects.

Governor Bernard probably foresaw that the most respectable opposition to the ministry might arise from the General Court ; and it was his plan to draw their attention from the obnoxious proceedings of Parliament,

ment, whilst they were sitting, and to preserve every appearance of reason for omitting to call them together again, until as fair a chance as possible could be given to the operation of the act for raising a revenue in the Colonies. Accordingly when he opened this session, he spoke only of the condition of the eastern country, and afterwards gave a minute statement of the numbers and force of the several Indian tribes, and recommended a conference with them. This, if agreed to, would have made it necessary for him to have been in that part of the Province, and to have delayed calling the General Court together for some considerable time. But the House avoided this plan, by assuring the Governor of their most grateful sense of that sincere regard to the interest of the Province, which his Excellency had expressed; but that, with all due submission, they did not apprehend those Indians to be formidable enough to occasion any apprehension of danger from their irruptions; and as their dispositions appeared pacific, and such a conference would create so great an expense, as, in the present state of the Province, would be very inconvenient, they did not think it necessary or expedient to make provision for it.

it. This determination of the House put the Governor upon the expedient of effecting the necessary delay by making a visit to the island of Mount-Desert, which had been granted to him by the General Court. 1764

The House of Representatives having finished the business of instructions to the agent, referred the consideration of choosing a person to be joined with Mr. Mauduit until the next sitting; and the General Assembly was the next day prorogued to the 25th of July, without any observations of censure or praise from the Governor. June 15.

In the recess a full opportunity was given for the measures of Parliament to operate upon the public mind.

No people were better instructed in the nature of their rights than those of Massachusetts. The nation, from which they descended, stood distinguished in Europe for its exemption from many restraints upon liberty, which the others continued to endure. Its laws had been gradually disentangled from most of the galling fetters imposed by feudal tenures, whilst they resisted with

with considerable effect the principles of the Roman code. Commerce had ameliorated the fastidious pride of the military spirit; and industrious enterprize raised herself by the side of national glory. Her foundation was freedom, and her success depended upon an unremitting vigilance and decided suppression of tyranny. Emanating from such enlightened policy, and partaking of all its rapid subsequent improvements, the British Colonists may be said to have been instructed in the wisest age, and in the most perfect political principles which the world had known. Their emigration, taken in all its circumstances, was without precedent. It consequently produced new cases, founded on unsettled principles, at every stage of its advancement. In the beginning they were considered as no part of the realm, in the view of the constitution; and held their charters of the King as his liege subjects. When the Parliament participated of the sovereignty, the Colonies, becoming the dominions of the realm, were made liable to its laws. These were acknowledged, until they were grounded on the violation of that great maxim of British freedom, that taxation and representation were correlative.

We

We have seen with what expertness, understanding, and fortitude the people of Massachusetts managed these questions in defence of their charter, and the various incidental disputes, which took place with their Governors, and, in some instances, with the Council. To their information upon constitutional points, and acuteness in controversy, their local situation compelled them to add the strictest frugality in the expenditure of public money. Rich in freedom and strong by industry, they were compelled by a reluctant soil to the unremitting exercise of the one in order to preserve the other. From wealth they could receive little assistance: trade, which regulates the current of money, was carried on at the will of the parent country; and she restricted the extent of it by the supplies of her manufactures, which her accommodation might dictate to be sent to the Colonies. In the chance of a war, invitations arose for greater commercial enterprize; but the gains were dearly purchased with the introduction of luxury, which by increasing the artificial wants of the inhabitants, left the balance against the country on the whole. To a people thus situated a tax was instantly and universally felt.

felt. It was a demand for the food and the raiment of the poor : it pervaded the recesses of frugal contentment : it awakened the jealousy of inquisitive speculation : it roused the anger of liberty.

These peculiarities in the circumstances and character of the inhabitants of Massachusetts dictated the mode of resisting the impending system of revenue and taxation of the Parliament of Great-Britain.

Recourse to arms was not meditated. A retrenchment in the use of foreign articles, especially at funerals, the encouragement of their own manufactures, and the consequent reduction of importations from England, were the expedients resorted to. This was to advance their own country at the expense of a powerful interest in the parent state, which might influence the ministry to reconsider and repeal their acts. Nor was the state of American manufactures unpropitious to such measures. The smelting of iron ore had been brought to such perfection, as greatly to check the importation of it from foreign countries. Pot-ash had become a considerable article of exportation ;
and

and the making of coarse woollens had so prevailed as to afford essential aid in clothing. Associations for encouraging these objects were commenced and afterwards generally agreed upon ; whilst a band of literary patriots martialled themselves round the standard of liberty, and boldly defended it by arguments drawn from the sound principles of the British constitution and provincial charters.

*Band of
Literary Pa-
triot.*

The Governor pursued his plan of procrastinating the session of the General Court. He prorogued it by three several proclamations until the 18th of October, by which time the clamor had become violent. He was charged with disabling the people in their attempts to defend their rights through the General Court ; and as public letters were known to have been received from their agent, it was suggested that he availed himself of the recess to anticipate an answer to the minister before they should be considered by the Assembly ; and that it would be soon demonstrated that he was the author of the nefarious scheme of taxation. Even the manner in which the island of Mount-Desert was obtained was held up to view, since

18 Oct

since it now served for a pretext to postpone the proper means of defending the rights of the Province which granted it.

Notwithstanding the delay which had taken place, the Governor in his speech reminded the members of the General Court, that he had called them together earlier than he had expressed his intention to have been at the former session, as several gentlemen of both Houses had signified to him their apprehensions that some further provisions were necessary for the maintaining of the territorial rights and commercial interests of the Province : that he should leave them to their own deliberations, since he might be thought not impartial and independent enough to be their counsellor ; and recommended unity, prudence, and moderation.

The members of the House justly represented the interests and feelings of their constituents. After referring over business of a private nature, they applied themselves to the drawing of an address to the King upon the subject of the late act of Parliament. The tenor of this was wholly incompatible with

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with the ideas of Mr. Hutchinson and his party; who therefore made a firm opposition to it in the Council. This produced a conference, at which he was first manager on their part; and afterwards a committee of both Houses, in which he exerted all his talents to defeat the address to the King, and finally converted it into a petition to the House of Commons, clothed in language which the haughtiest burghers in England might have deigned to hear, and supplicating a continuance of the privileges which the Colony had enjoyed as a matter of mere grace and favour. The objections to the revenue law were coldly stated on the ground of injury to the fisheries, and a consequent reduction of the means of paying for British manufactures; and the arguments against the future stamp act were drawn from the inconvenience that would result from draining the Colonies of money, which must conduce to the same evil: and so, upon the whole, that Great-Britain would lose more from the diminution of her manufactures, than all the sums which it was possible for the Colonies thus to pay could countervail. In short, the ideas of this petition appeared

appeared to follow exactly the dictates of the agent ; and it concluded with a prayer that time might be granted, in order that the petitioners in conjunction with the other governments might have opportunity to make a more full representation of the state and condition of the Colonies, and the interest of Great-Britain with regard to them. Nothing was said of the right of Parliament to impose the tax, nor of the disposition of the Colonists to avoid the operation of it.

During the debates upon this subject, the Governor communicated a letter from the Earl of Halifax, signifying the King's displeasure at the conduct of the Assemblies in New-England, in refusing or delaying to comply with General Gage's requisition for men. The House referred the consideration of this to the next session ; and the peace, which was soon after concluded with the Indians, made this communication of no further importance, than the influence which it might have had upon the members at this critical juncture ; and raising a new argument from the backwardness of the House to act conclusively upon it, in favour of his Majesty's establishing a standing force within

within the Colonies for defending them at their own expense. But the petition is fairly to be attributed to Mr. Hutchinson's address. Having wearied the committee with a tedious opposition of ten days, and embarrassed the House by the counteracting votes of the Council, he obtained a petition wholly destitute of the spirit displayed in the instructions to the agent at the last session. He then became solicitous to wipe off any misconstruction in England of what would appear by the records, his being at the head of a committee upon an affair of such a nature. In order to effect this, he offered to a correspondent of a public character, as an apology for drawing the petition, his fears that the Court would unite in something worse. He shewed his services in convincing the majority of the members of the imprudence attending every measure, which looked like opposition to the determinations of Parliament : and he made use of the same occasion to propose resigning his commission as Lieutenant-Governor, whenever a new Governor should be appointed, and lodging a letter of resignation in the hands of his friend to be used, when the event might require.

Hutchinson's M. S. copy of his letter to Mr. Jackson, Nov. 5, 1764.

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The public business was closed by an address to the Governor, in which the two Houses stated the grievances they apprehended themselves to be under from the late act of Parliament, nearly in the same manner as related in their application to the House of Commons, dividing them into such as affected the civil rights and such as related to the commercial interests of the Colonies. The trials by the courts of Admiralty were of the first kind, and were the more alarming, as, according to the practice of that court, the Judge and officers had a twentieth part of the whole value of the articles condemned, but in case of acquittal, were entitled only to customary fees ; the manifest tendency of which was to procure decrees of condemnation, where there was no just cause of seizure. The grievances of the second kind were the effect of the act upon the fishery, and the exportation of lumber, which was restricted to Great-Britain. From the injury of the colonial commerce the evil consequences upon the interests of Great-Britain were easily adduced. His Excellency was requested to lay these observations, and a copy of the petition to the House of Commons, before his Majesty's ministers,

ministers, and to represent to them the grievances mentioned to arise from the late act, and apprehended to be the probable result of a stamp duty, and earnestly to beseech the favour of their great influence to ease them of the burden of the one, and remove from them the apprehensions of the other.

The proceedings at this session shew how extremely difficult it was for the British ministry to obtain just information of the spirit and views of the Colonists, if it were the subject of real inquiry. Their representatives were made to speak a language far short of their alarms, and to place their rights upon little better footing than that of indulgence. The mode in which this was brought about, it was the interest of the agents to misrepresent or conceal. Party spirit prevailed, and it is not wonderful that the affairs of America should be seen through its false medium, fixing objects in a wrong point of view by refracting them from the line of truth ; and, instead of an exact image presenting a distorted and delusive figure to the eye of the transatlantic spectator.

The

The General Court had scarcely risen, when copies of the address and memorials to the King, Lords, and Commons, from the Province of Virginia, were laid before the public. Those from New-York had been previously received. The independent spirit displayed in these applications; the energy with which the American rights were stated and maintained, and the conclusive force of the arguments formed an humiliating contrast in the minds of the warm patriots, between them and the petition from their own Province. They complained of diffidence and want of zeal in their Legislature. But their opponents on the other hand saw nothing advantageous to the country in this lofty style, which they thought amounted to folly and madness; that there could be no useful purpose answered in claiming an exemption from taxes, when the whole body of the people of England, who had the power, was against the Colonies; that these noble sentiments, as they were called, had determined the ministry immediately to make it a point, whether the nation or the Americans should conquer: and it was the most to be lamented, that

that these rash high flying petitioners would not suffer alone, but must involve in their fate those, who were not less firm, though more moderate. The arguments of this party at home were aided by a communication to a correspondent of their leader in England, suggesting a hope that the agent for New-York would excuse himself from presenting their petition or from making it public, as it was reported he had orders to do, let his instructions be what they might. Whilst the zealous controversialists thus opposed each other, all rational men drew a just conclusion from the unequal if not discordant tenor of the petitions from the several Provinces, that there was a necessity of some common Assembly who should deliberate and unitedly declare the unequivocal voice of all British America.

Hutchinson's M. S.
letter-book,
Nov. 1764.

1765

CHAP. VIII.

Dispute between the Council and House respecting the form of passing a resolve—Extraordinary grant to the Chief Justice carried by one vote only—Richard Jackson, jun. chosen agent in the room of Mr. Mauduit—Stamp Act passed—Proceedings of the House of Representatives—Meeting of a General Congress at New-York recommended—Delegates chosen in Massachusetts—Observations on the ministerial pretences of taxing the Colonies, published at New-York—Resolutions of the Virginia Assembly—Acts of the people—Riots in Boston—Lieutenant-Governor Hutchinson's house destroyed.

1765.

THE Province of Massachusetts Bay having put herself in a supplicating attitude before the House of Commons, nothing now remained, but to wait the issue of her petition. This could not be known when the Governor called the General Court together at the winter session. Their proceedings were, of course, little connected with the

Jan. 9.

the subject of the late controversy ; and their communications with the Governor wore that conciliatory appearance, which naturally resulted from a state of expectation founded on the effect of a humble experiment. He congratulated them upon the subsiding of the troublesome appearances, which had arisen from some ill-advised encroachments by certain French and Spanish commanders, that had been disavowed by their respective courts, and upon the happy termination of the Indian war, in an honourable and safe manner. He informed them that he had recommended to the favour of his Majesty's ministers the petition which they had prepared ; and that he flattered himself that their representations would receive great weight from the dutiful manner in which they were formed ; concluding that the late exemplary instances of their unanimity, prudence, and moderation, in times of difficulty and distrust, would distinguish them to their advantage, would confirm the reputation they had hitherto acquired, and give assurance of their resolution to support it by their future conduct.

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The Council and House of Representatives, in their answer to the Governor's speech, took great care not to counteract their late pacific proceedings. After returning the congratulations upon the removal of hostile appearances with France and Spain, and the termination of the Indian war, they observed upon the subject of their petition, that they flattered themselves, that their representations would have success, not only from the dutiful manner in which they were formed, but from the necessary connexion which there was between the interest of the nation and the success of that petition, it being a demonstrable truth, that the national interest would be best promoted and secured by encouraging the trade of the Colonies. If that prospered or declined, so would the trade of Great-Britain, but in a greater proportion. That her power and wealth, however great, were still in their minority compared with what, it was probable, they would one day be, if the trade and growth of her Colonies were not impeded.

They thanked the Governor for his declaration of promoting the real welfare of the Province consistently with its subordination

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to the kingdom of Great-Britain, and the common interest of the whole empire, in consistence with which, they hoped for his endeavours for that purpose, and pledged their inclinations conspiring with their duty, to give him their assistance.

They agreed that the times were difficult, but they hoped that these were not times of distrust: they distrusted not the wisdom and goodness of Parliament, having with the Colonies in general often experienced the happy effects of both. On the same wisdom and goodness, next to the supreme, they still relied. As that respectable body had power, they humbly trusted their wisdom and goodness would exert it, to remove the embarrassments upon their trade, to which the difficulty of the times was owing: and if in his Excellency's estimation they had acquired any reputation hitherto, they hoped to support it by their future conduct; at least to evince that they had done their best for that purpose.

Reasons sufficiently obvious led to the complacent disposition shewn by the House of Representatives to the Governor, and he reciprocated

reciprocated by approving of Mr. Otis as their Speaker pro tempore, in the room of Mr. White who was unable to keep the chair from indisposition. But these reasons did not extend to the Lieutenant-Governor, nor always to the Council, over whom he presided and whom he generally guided by his influence. This must account for a dispute, which took place between the two Houses, upon the mere form of passing a resolution, to authorize the Treasurer to continue drawing his bills of exchange in the name of Mr. Mauduit, notwithstanding the choice of Mr. Jackson. It originated in the House, and was concurred by the Council as taken into a new draught, in which the form of its originating in the House was preserved, as the custom has since been established. To this the House objected, and sent a message to inform the Board that it was usual for the House to originate their own resolves, and that they chose to continue in that practice. This necessarily produced a message in justification of the Council, in which they plead the uninterrupted practice of both Houses, in taking into a new draught any vote sent from one to the other, in order to save the trouble and perplexity

ity which arose from a great number of amendments by marginal references : and that the Board not intending to prepare a vote to originate in the House, but to alter a vote before originated there, the House had no just occasion for sending such a message. In answer to which the House acknowledged the practice of drawing anew, but contended that one House had never made a draught for and in the name of the other, and then sent it to the other to act upon ; and they therefore thought that the Board had done something more than altering or amending the vote sent up. In the event, the Council originated and passed a new resolution, which the House non-concurred, and originated and passed another like it, with the variation of one immaterial word, and that perhaps by accident, in which the Council concurred, and so terminated the dispute.

Whilst the two Houses were thus contending about a form, the period arrived for making the annual grants to the civil officers. The extraordinary allowance, usually made to the Chief Justice of the Superiour Court for his peculiar services, came under consideration

consideration of course. This had been omitted for the three last years, and now met with strong opposition, most probably from the same principles, which must have been founded on Mr. Hutchinson's supposed political sentiments, since against his judicial conduct in general there was no ground of objection: it was just, intelligent, and popular. The question upon his grant was finally taken by yeas and nays, in the House, and was carried in the affirmative by a majority of only one vote.

But the most important business, which the General Court transacted at this session, was the choice of an agent in the room of Jasper Mauduit, Esq. who had requested to be excused on account of his declining health. The common cause of the continental Colonies greatly depended on the fidelity and exertions of the persons, whom they might employ in England. A powerful influence in the West-India planters was to be overcome, before a reduction of the duty on molasses could be effected; and a great interest relied on for procuring a repulsion of the stamp act was that of the merchants trading to America, whom the
agents

agents were to inform, persuade, and, if possible, bring to action. Mr. Mauduit had always despaired of the minister's renouncing the principle of taxing the Colonies, and expected nothing beyond the reduction of the duties; nor did the other agents seem more sanguine, since, according to his account, some of them would not meet on the business, and just before the passing of the stamp act only one had come to him to facilitate their meeting. Whilst such languid and desponding feelings prevailed at the place of action, little was to be hoped for, unless vigour could be inspired from the spirit of the country. The Assembly, distrustful of servants placed at so great a distance, and finding the difficulty of removing them at pleasure, voted that the powers of any future agent should be limited to the term of three years, and then proceeded to the appointment. Mr. Hutchinson having withdrawn himself, there remained only Mr. Bollan, who had again offered his services, but whose accounts remained unsettled; Israel Mauduit, the brother of the agent, who was suspected to be too much under ministerial influence; and Richard Jackson, jun. a gentleman of the law in England, agent for Connecticut,

Jasper Mauduit's M. S. letter, Jan. 11, 1765.

1765 Connecticut, and who was the particular friend of Governor Bernard, as well as the intimate correspondent of Mr. Hutchinson. In the event Mr. Bollan was given up, under pretence of keeping out Mr. Mauduit, and Mr. Jackson was chosen.

Feb. 7 The respectful silence, which prevailed in Massachusetts during the supposed operation of their petition, was at length broken by the arrival of the parliamentary proceedings. On the seventh of February the House of Commons resolved, and it was afterwards enacted, that certain stamp duties should be imposed on the Colonies in America. If there were any who had confidence in the effect of the petition, what must have been their disappointment! How great was the victory of its opponents! How contemptuous the situation of its advocates! There was nothing saved by their friends in England, even in appearances, to justify their zeal for moderate measures. So impatient was the House of Commons in the exercise of their disputed right of taxation, that no member could be found to present the petitions from New-York and Virginia, and that from Massachusetts remained in the private

vate keeping of Mr. Jackson. The act itself was framed with so little regard to the ease and notions of the people, that if their enemies had any ground for charging them with restlessness and ambitious designs of independence, the reproach might have been fairly retorted, from the apparent attempt to provoke them to it by this memorable law. Beside the great amount of the duties imposed by it, they were laid upon objects of which the public opinion was naturally jealous. The indiscriminate rates affixed to papers at the probate offices, and the tax of two pounds upon every degree conferred by seminaries of learning, were evidence of this : and, in addition to all, the forfeitures for breaches of this and the other acts of revenue were made recoverable in the detested courts of Admiralty. It was in vain longer to attempt restraining the popular indignation. The effect of some alleviating measures which the ministry adopted was not now to be felt. It was of trifling consideration that American lumber was admitted to all the markets of Europe ; and even a bounty allowed upon it, when imported into Britain ; that the
colour

Jasper Mauduit's letter,
Feb. 9, 1765.

colour for injurious exactions in the case of inland navigation between the Colonies was taken away ; that a project of some sugar bakers in the cities of London and Bristol for suppressing refining houses in America was stopped ; or that the threatened clause in the mutiny bill for quartering troops in private houses was renounced. The impending blow was too alarming to admit of attention to such inferior objects. If plucking the leaves from the tree of liberty had excited such agitations, what was to be expected, now the axe was laid at the root ?

Such was the magnitude of the evil at first, that all seemed to pause, as if at a loss to fix upon any measures for resisting it : and Mr. Hutchinson wrote that they were waiting, not to know whether they must submit to a stamp duty, but when it was to take place and under what regulations ; and what further provision was to be made, if the duty should fall short of raising the sums that the Colonies were to pay, which report had fixed at £330,000 sterling, including the West-Indian islands. How was the pause which gave rise to this apparent acquiescence misconstrued ! Instead of a sleep

sleep infused by the opiate of parliamentary power, it was like the silence which precedes an earthquake, and forboded the convulsions of a dreadful explosion to all the abettors of the ministerial projections.

Attempts were first made to unlock the restraints upon the language and proceedings of the General Court. The obstructions to this lay chiefly in the Council ; and Mr. Hutchinson was the principal of them. His removal therefore was to be persevered in ; and exertions were accordingly made to effect it, but as yet they proved ineffectual. He still remained at the helm of public affairs, directing them against the adverse force of popular opinion, until it rose to such a height, as to overwhelm him and his adherents in its irresistible violence.

Disturbed as the minds of the people were by the proceedings of Parliament, it seems impossible that the election of the old Counsellors could have been the unbiassed act of their representatives. Intrigue must have had its share in bringing about a state of things, which put the General Court into a situation so truly humiliating. Whilst the feelings

feelings of all men were alive to the critical and dangerous state of the country, they were fixed upon their seats to hear a speech from the Governor, in which the cause of the general alarm was not mentioned ; and in answer to which it was not to be expected that the present Council could be induced to take it into view. He addressed them upon the manufacturing of pot-ashes, the raising of hemp, and carrying lumber to the British markets, which would furnish them with sufficient resources to pay for their imports, and prevent any occasion of vainly attempting to transfer manufactories from their settled abode. He told them that it was their happiness that their supreme legislature, the Parliament of Great-Britain, was the sanctuary of liberty and justice ; and that the prince who presided over it, realized the idea of a patriot king : that they should then surely submit their opinions to the determinations of so august a body, and acquiesce in a perfect confidence that the rights of the members of the British empire would ever be safe in the hands of the conservators of the liberty of the whole.

So successfully was the cause of the advocates for the British government managed

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at the elections, that Mr. Hutchinson, encouraged by it, presented a memorial for an allowance for his services as Lieutenant-Governor, which was supported by a special message from the chair. But the House of Representatives voted that they would not commit them; and that they would not make any grant to the memorialist.

Instead of answering the illusive speech of the Governor, the House proceeded to business of more importance to their constituents. After considering the difficulties of the Colonies, and what dutiful address it might be proper to make to his Majesty and the Parliament respecting the late laws, they proceeded to lay the foundation of the American Revolution: they voted that it was highly expedient there should be a meeting, as soon as might be, of committees from the Houses of Representatives or Bur-
gesses in the several Colonies on this continent, to consult together on the present circumstances of the Colonies, and the difficulties to which they then were, and must be reduced by the operation of the late acts of Parliament for levying duties and taxes on the Colonies, and to consider of a general
and

June 25.

*Congress**at New York*

and humble address to his Majesty and the Parliament, to implore relief: that the meeting should be held at New-York, on the first Tuesday of October following: and that letters be forthwith prepared and transmitted to the respective Speakers of the several Houses of Representatives or Burgeſſes, to adviſe them of this reſolution, and to invite them to join by their committees in the meeting. The Houſe then prepared the form of a circular letter and appointed a committee in behalf of Maſſachuſetts, conſiſting of James Otis, John Worthington, and Oliver Partridge, Eſquires; but Mr. Worthington excuſing himſelf from the ſervice, Timothy Ruggles, Eſq. was choſen in his room.

This meaſure was irrefiſtible by the Governor and his friends; it was too conſiſtent with the petition to the Houſe of Commons which they had effected, now to meet with their oppoſition; and the ſpirit of the people probably would not have borne with any further management in the General Court upon this ſubject. Mr. Hutchinson's party therefore acquieſced in what they could not prevent, and endeavoured to procure members

bers for the committee who might be suitable to their views. How far they succeeded in this will be seen hereafter.

Upon the rising of the General Court, there was published, from the Gazette at New-York, observations upon the ministerial pretences of taxing the Colonies, in which the doctrine of virtual representation was refuted, and the power of Parliament strictly examined. After shewing the difference between the Colonies and the corporate towns and bodies in England, who had no share in the choice of members to Parliament, and demonstrating that as every distinct interest in a government ought to have its due weight in the administration of public affairs, so each of those interests should have the appointment of Representatives in number as near as might be proportionate to their interest in and importance to the government in general, this writer asserted, that where there was an entire inconsistency of interests, so that the benefit of one must necessarily be in the same degree hurtful to the other, that then these two interests could never unite in the same government; and applying this observation to the case of Great-Britain

June 25.

Britain and her Colonies, inferred that if their interests could not be made to coincide, (which he believed they might) if the same constitution might not take place in both, as it certainly ought; if the welfare of the mother country necessarily requires a sacrifice of the most valuable national rights of the Colonies, their right of making their own laws, and disposing of their own property by representatives of their own choosing; if such was really the case between Great-Britain and her Colonies, then the connexion between them ought to cease, and sooner or later must inevitably cease, and perhaps end in the total ruin of one or both of them: that the English government could not long act towards a part of its dominions upon principles diametrically opposite to its own, without losing itself in the slavery it would impose upon the Colonies, or teaching them to throw it off, and assert that freedom which was denied them by those, who had no better right to it than themselves. Upon the subject of a virtual representation this writer observed, that if persons here might be represented in England without their own choice; then by parity of reason, persons there might be represented here in the same manner.

manner. The laws passed in the Colonies, after obtaining the royal assent, were of equal force with acts of Parliament : so that the Colonists had as really a legislative power as the people of England, and therefore if they were to make acts of assembly to levy taxes upon the people of England, and obtain the royal assent to them, could any man tell why those acts should not be as binding upon the people of England as their acts were upon the Colonists ? There was indeed a difference in the power to enforce the acts. If such an imposition would appear abominable to the people in England, let them be as tender of the Colonial rights, as they would wish the Colonists to be of their's under a reverse of power, and such a time might possibly come in future ages. Even though it should appear that there were several towns, corporations, and bodies of people in England, under similar circumstances to those of the Colonies (which he proved was not the case) yet that would only shew, that some of the people in England, as well as those in America, were injured and oppressed ; but it would shew no sort of right for the oppression. It would shew that those places ought

1785- ought to join with the Americans in remonstrances to obtain redress of grievances. As to the dependency or independency of the Colonies, it was not conceived that those terms could be applicable to them. They were a part of the British dominions; but could one part of a kingdom be said to be dependent on another, when all have the same common rights? They have indeed a reciprocal dependence upon one another for assistance, conveniency, and security of their common and respective rights; but they do not derive their rights from one another. From the Author of nature alone they receive them.

M^r Henry At the same time appeared the resolutions of the Virginia assembly, that his Majesty's liege people, the inhabitants of that Colony, were not bound to yield obedience to any law or ordinance whatever, designed to impose any taxation upon them, other than the laws or ordinances of their General Assembly.

These publications gave a great elevation to the spirits of the people; and writers were not wanting within the Province to enforce similar political tenets, until a resolution seemed

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seemed to be taken that opposition should assume a new appearance. Had the dispute respecting the stamp act been suffered to remain with the legislatures of the respective countries, the course of events might have been essentially different, and peace might have continued for many years longer. Such was the check upon the Governor allowed to the voters in Massachusetts, through their representatives, that they could have withheld all means of executing any act of Parliament, which was obnoxious to the people, whilst deeds of violence which might have afforded a pretext for introducing foreign troops to enforce the laws would have been avoided. But whether it was that the meeting of Commissioners at New-York was appointed too near the commencement of the stamp act, to produce any measures in season to prevent its operation ; or that it was feared the minds of the members might be shaken, so as to discover less firmness in asserting the rights of the Colonists than they ought ; or that the general impatience was too violent to wait for the issue of their proceedings, certain it is, the controversy was assumed by the people.

*The People**1766*

On the 14th of August an effigy was found hanging on a tree, afterwards well known by the name of liberty-tree, at the southerly part of the main street of Boston, with marks sufficiently indicative of its representing Andrew Oliver, Esq. the proposed distributor of stamps in the Province. Accompanying this were emblems intended for Lord Bute, and the wicked motives which suggested the odious acts of Parliament. Mr. Hutchinson, as Chief Justice of the Superiour Court, directed the Sheriff to take this pageantry away, and in case any persons should oppose him, to report their names, and a warrant should be granted to apprehend them. But the Sheriff's deputies thought it not safe to attempt cutting down the effigies, as they found the people had determined to take it in the evening and bury it in form. The Governor met the Council; and they thought that if this was suffered to be done, all would be quiet afterwards. At night a bier was prepared, and the images, being placed on it, were carried, amidst the acclamations of an immense collection of people, through the Court-house, whilst the Council were sitting in the chamber, down King-street, to a small brick building supposed to have

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have been erected by Mr. Oliver for the reception of the stamps. This was quickly levelled with the ground, and all proceeded to Fort-Hill, near which stood Mr. Oliver's house, to burn the pageantry. Mr. Hutchinson and other friends of Mr. Oliver, finding his family to be in great terror, persuaded both to quit their dwelling, but remained themselves, which gave some appearance of opposition. An attack was made by breaking the windows and pulling down a fence, after which the people entered the house and destroyed part of the furniture. The Governor delivered an order to Mr. Hutchinson, at his request, and to be used at his discretion, directing the Colonel of the regiment in Boston to order it under arms. But Mr. Hutchinson afterwards preferred attempting to disperse the rioters by his own influence. They shewed him very little respect, and after compelling him to save himself by flight, which he did not effect without rough usage, they separated. On the next day Mr. Oliver thought it expedient to authorize several gentlemen to announce on the exchange, that he had declined having any concern with the office of Stamp-Master; but in the evening a bonfire was made,
and

1765. and a repetition of this declaration was found to be necessary for quieting the people who had assembled around it. When this was done, they drew off to the house of the Lieutenant-Governor, and shewed a strong disposition to assail it, demanding satisfaction from him relative to the report of his being in favour of the stamp act, and requiring his assurance that he was not. Mr. Hutchinson had secured his house, and having concealed himself within it, declined appearing. A prudent citizen came forward, and undertook to be responsible that Mr. Hutchinson was not in favour of any act, which would be injurious to the country. He observed that they were about to ill treat a man, who had been forty years in its service, and reminded them how unreasonable it was that an officer in his station should be held accountable to them in such a manner. The persuasion of this man, who had an influence in town-meetings, induced the body to move off, and for this time saved further outrage. Had the popular indignation stopped here, the degree of violence might have been considered as justified by the provocation; and such as was necessary to give a tone to the proceedings of the public agents. But this
line

line was soon passed over, and the cause was essentially injured and disgraced by increased outrage and brutal destruction. Perhaps the sun of liberty must always rise in the mist of anarchy, and gradually dispel its noxious vapours, as he ascends to his meridian lustre.

After these disturbances Mr. Hutchinsón retired to his house at Milton, and returned on the 26th of the month. There soon appeared symptoms of renewed tumults ; but it was supposed that he had received his share of popular displeasure. This however was a great miscalculation of its continuance and malignity. About twilight a bonfire in King-street was the signal for assembling ; and when the number of rioters had become sufficient, they proceeded to the house of William Story, Esq. Deputy Register of the Court of Vice-Admiralty, whose office was unpopular, and whose conduct was said to have given offence to many. This was laid open to their rage, and his private papers, as well as the records and files of the court, were consigned to the flames or otherwise destroyed. The house of Benjamin Hallowell, jun. Esq. Comptroller of the Customs, next met their fury. After breaking his windows,

1765- windows, they entered, destroyed his furniture, purloined his money and papers, and rioted on the liquors in his cellar, until intoxication heightened their rage to madness. Thus brutalized, they directed their course to the Lieutenant-Governor's dwelling, where his domestic happiness in the enjoyment of his children at once formed a striking contrast to their diabolical employment, and furnished desirable victims for their malice. This family circle was instantly dispersed, and after closing the house, Mr. Hutchinson was constrained to follow, by secret passages, to save his life. All was now delivered up to a triumphant demonocracy, which exercised its force effectually until day-light, when one of the best houses in the Province was presented in complete ruin, the very partitions being beat down, and nothing remaining but the naked walls and floors. The plate, family pictures, most of the furniture, wearing apparel, the books and manuscripts which had been thirty years collecting, with about £900 sterling, in cash, were stolen away or destroyed: so that, on the next day, when the want of a quorum of the Judges necessitated Mr. Hutchinson as Chief Justice to take his seat at the Superiour Court, he was obliged

obliged to appear in his only suit, and without the habiliments of his office.

All disavowed these infamous proceedings. The town of Boston on the next day voted unanimously, at a full meeting, that the Selectmen and magistrates be desired to use their utmost endeavours agreeable to law, to suppress the like disorders for the future, and that the freeholders and other inhabitants would do every thing in their power to assist them therein. And the magistrates with the Cadets and other military companies kept a night watch for the preservation of peace and order. The Governor likewise issued his proclamation, with the advice of Council, offering rewards for discovering any person concerned in either of the riots. These however had no effect, as very few were apprehended, and those who were, afterwards broke gaol and escaped.

False reports having preceded the commotions of the people, and it being now suggested that the stamped papers were, upon their arrival, to be lodged at the Castle, not merely for safe keeping, but to be thence distributed;

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tributed; the Governor thought proper to make a declaration to the Council, in confirmation of what he had said in private, that he had no authority for distributing the stamped paper, and that he should not be so imprudent as to undertake a business to which he had no appointment, and make himself answerable for large sums of money, the receipt of which he could not attend to, and had no power to direct or order; and this declaration was published at the request of the Council.

The period for trying the strength of parties in executing the stamp act was near at hand. The Governor having prorogued the General Court to the twenty-fifth of September, five days before the time assigned for the commencement of it, issued his proclamation for the punctual attendance of the members. Had the struggle come on under all the impressions made by the riots, without the influence of any external event, the advantage to the parliamentary cause must have been great. But advice was daily received of similar proceedings, though not so flagrant, in other Colonies, and the glad tidings of a change in the ministry arrived from

from England. These circumstances operated heavily against the Governor and his adherents, who could not have approved of the stamp act in the beginning, however they might have favoured the general principle of taxing America. It was too great a step for the outset; further advances should have been first made by external duties; and the encroachments upon internal taxation should have been directed and graduated with the most scrupulous attention to popular prejudice. But, let their opinions have been what they might, they determined upon exerting their utmost powers to enforce the act. They endeavoured to put the cause upon this ground, that either the stamp duty must be submitted to, or all trade must cease, and all courts and other lawful authority fall, and throw the whole community into confusion. Upon this principle the Governor collected all the arguments persuasive and terrific which the subject afforded, at the assembling of the General Court. He told them that the ordinary executive authority was much too weak to contradict the declarations which had been made and still subsisted, that the stamp act should not be executed within the Province, or to oppose the force

1765- force by which they were supported. It had therefore been found necessary to call the whole legislative power in aid of the executive government, and that from this time the arduous business would be put into their hands, and it should become a Provincial concern : that the right of the Parliament of Great-Britain to make laws for the American Colonies, however it had been controverted in America, remained indisputable at Westminster. * * * * *

The Representatives immediately after the delivery of this speech raised a committee to frame an answer which might counteract its effect upon the people, and raised another committee to consider the affairs of the Province with reference to the operation of the stamp act, who reported that * * *

CHAP. IX.

Unfinished.

POLITICS frequently afford us cases, where effects are produced by remote and accidental causes ; and when there are insuperable impediments to the fair operation of reason and justice, some substitute arising from the passions or interests of men is found to bring about what a more honourable motive ought promptly to have executed : so that whilst we view on the one hand many laudable efforts fail of their objects, we see on the other many things expedient and right resulting from indifferent and unworthy designs. The repeal of the stamp act affords a striking example of this. It was not renounced because Parliament had not a right to impose it, nor because it was oppressive to those who were not obliged by law to bear it, nor from the important consideration of its alienating the affections of the whole British Colonies and its probable consequences of alienating their allegiance to the Crown ; but because Mr. Grenville, who

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was the author of it, disagreed with the King about making up a regency in case of * * * * * This threw him out of office, and the succeeding ministers repealed the law, with a thousand better reasons for doing so, because, he made it.

END OF VOL. II.

was the manner of it, directed with the King
about making up a legacy, in case of *
* * * * * This threw him out
of countenance, and the succeeding ministers repeat-
ed the same, with a thousand better reasons
for doing so, because, he was a **PROTESTANT**

END OF VOL. II.

